BRIEF FOR PLAINTIFFS-APPELLANTS
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.
and ALLIANCE OF ARTISTS AND RECORDING COMPANIES

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.
and ALLIANCE OF ARTISTS AND RECORDING COMPANIES,

Plaintiffs-Appellants,

v.

DIAMOND MULTIMEDIA SYSTEMS, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the Central District of California
in CV 98-8247 ABC (RZx), Judge Audrey B. Collins

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Dated: November 24, 1998

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, appellants Recording Industry Association of America, Inc. and Alliance of Artists and Recording Companies are trade associations operating as not-for-profit corporations. Neither appellant has a parent corporation nor a publicly held company owning 10% or more of its stock. Each appellant is comprised of hundreds of members which include recording companies and artists. A listing of the individual members of each of the appellants is attached as Addendum 2 to this brief.

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STATEMENT OF JURISDICTION

This is an appeal from an interlocutory decision denying plaintiffs' motion for a preliminary injunction to enjoin violations of the Audio Home Recording Act, 17 U.S.C. § 1001 *et seq.* The district court had jurisdiction over the underlying action under 17 U.S.C. § 1009 and 28 U.S.C. § 1338 (a). The district court's decision denying plaintiffs' motion for preliminary injunction was entered on October 26, 1998, and plaintiffs Recording Industry Association of America, Inc. and Alliance of Artists and Recording Companies timely filed a notice of appeal on October 27, 1998, pursuant to Federal Rule of Appellate Procedure 4 (a) (1). This Court has jurisdiction over the appeal under 28 U.S.C. § 1292 (a) (1).

STATEMENT OF THE ISSUES

The district court denied a motion for preliminary injunction submitted by the Recording Industry Association of America, Inc. and the Alliance of Artists and Recording Companies, seeking to enjoin the manufacture, importation, and distribution of the Rio PMP 300 digital audio recording device by Diamond Multimedia Systems, Inc. ("Diamond"), in violation of the Audio Home Recording Act ("AHRA"), 17 U.S.C. § 1001 *et seq.*, and its restrictions on serial copying.

The issues presented on this appeal are:

1. Whether the district court violated its statutory responsibility and abused its discretion by failing to enter a preliminary injunction against Diamond prohibiting the manufacture, importation, and distribution of the Rio PMP 300 digital audio recording device.

2. Whether, having found that defendant violated the AHRA by failing to obtain a required certification from the Secretary of Commerce that the Rio device "prohibit[s] unauthorized serial copying," the district court erred in concluding that the violation was "technical" because the court, substituting its judgment for that of the Secretary of Commerce, believed that the required certification would be obtained if it were sought.

3. Whether the district court erred in concluding that the Rio device would be certified by the Secretary of Commerce as "prohibiting

unauthorized serial copying" where the district court had found that, in the normal course of its operation, the Rio device engages in serial copying within the meaning of the AHRA and would be used to make unauthorized copies of copyrighted music.

4. Whether, in balancing threatened irreparable injuries, the district court committed an error of law and abused its discretion in concluding that the injury to Diamond from being denied the profits obtainable from illegal sales of a noncompliant product outweighed the damage to legitimate record companies and recording artists caused by those illegal sales.

STATEMENT OF THE CASE

This is an appeal from the denial of a preliminary injunction in a case involving the manufacture, importation, and distribution of a digital audio recording device in violation of the Audio Home Recording Act ("AHRA"), 17 U.S.C. § 1001 *et seq.* The plaintiffs-appellants are the Recording Industry Association of America, Inc. ("RIAA"), the trade association of United States record companies, and the Alliance of Artists and Recording Companies ("AARC"), an association of recording artists and companies with responsibility for administering the AHRA. Plaintiffs brought this action on October 9, 1998, seeking temporary and preliminary injunctive relief and other relief based on the imminent manufacture, importation, and distribution of the Rio PMP 300 ("Rio") digital audio recording device by Diamond Multimedia Systems, Inc. ("Diamond") without complying with any of the requirements of the AHRA. Plaintiffs have standing to maintain this action under the AHRA. *See* 17 U.S.C. §§ 1001 (7) (D), 1009.

After briefing and a hearing on October 16, 1998, the district court granted plaintiffs' motion for a temporary restraining order and order to show cause why preliminary injunction should not issue, finding that plaintiffs had demonstrated probable success on the merits. *See* Excerpts of Record ("ER") 7; *see also* Transcript of October 16, 1998 Temporary Restraining Order Hearing ("TRO Transcript") at 44-45 (included in Clerk's

Record ("CR")). However, on October 26, 1998, the district court denied plaintiffs' motion for a preliminary injunction. The district court concluded that plaintiffs' likelihood of success on the merits was "mixed" and that the balance of harm tipped in favor of Diamond. As set forth below, the district court committed errors of law in reaching that conclusion, and its denial of the preliminary injunction should be reversed.

A. The Audio Home Recording Act

In 1992, Congress amended the Copyright Act by enacting the AHRA, a comprehensive statutory scheme designed to control the use of, and limit the injury inflicted on copyright owners by, digital audio recording technology. With analog recording devices, there is degradation in the quality of the sound reproduced from an original to a copy. ER 4 (Declaration of Kenneth C. Pohlmann ("Pohlmann Decl.") ¶ 4). This degradation in sound quality becomes pronounced when there is serial copying, that is, when second and higher generation copies are made from a first generation copy. *Id.* In contrast, absent the AHRA, digital audio recording devices would permit the unlimited reproduction of generation after generation of perfect or near perfect copies of prerecorded music, virtually all of which is copyrighted. *Id.* Thus, from a single prerecorded CD, thousands of essentially perfect copies and copies of copies could be made by people who had never even seen the original CD. *Id.*

The AHRA facilitated the introduction of digital audio recording devices to the United States market by providing manufacturers and consumers with limited immunity from copyright infringement liability. But in return, the AHRA imposed certain requirements and restrictions. Among other things, the AHRA requires the payment of royalties on sales of digital audio recording devices, 17 U.S.C. § 1003, and mandates that any digital audio recording device imported, manufactured, or distributed in the United States control unauthorized serial copying with one of three statutorily prescribed methods. Those methods are (1) the Serial Copy Management System ("SCMS"), (2) a functional equivalent of SCMS that exchanges information with SCMS-compliant devices, and (3) a system certified by the Secretary of Commerce as prohibiting unauthorized serial copying. 17 U.S.C. § 1002 (a).

SCMS is a specific technical implementation of a system to prohibit unauthorized serial copying designed for a number of identified devices existing at the time of the enactment of the AHRA. The precise operation of SCMS in each of the identified devices is set forth in a Technical Reference Document reprinted in the AHRA's legislative history. *See* H.R. Rep. 102-780, pt. 1, at 32-50 (1992); *see also* H.R. Rep. 102-873, pt. 2, at 14 (1992). Anticipating the development of future technologies and new devices, Congress included in the AHRA provisions specifying how such devices

might comply with the AHRA's restrictions on unauthorized serial copying. The provision at issue in this case, 17 U.S.C. § 1002 (a) (3), permits the Secretary of Commerce to certify systems "as prohibiting unauthorized serial copying." The AHRA provides that, to the extent compliance is sought under Section 1002 (a) (3), certification by the Secretary of Commerce is required prior to a device being manufactured, imported, or distributed in the United States.

B. The MP3 File Format and the Problem of Internet Piracy

"MP3" is the common name for a new audio compression technology more formally known as Motion Picture Experts Group ("MPEG") 1 layer 3. This technology allows digital audio files to be compressed by a factor of about 11. ER 5 (Pohlmann Decl. ¶ 6). MP3 files can be transmitted over the Internet in about 1/11 the time required to transmit uncompressed audio files, and occupy only about 1/11 of the memory required by uncompressed audio files. Notwithstanding the 11-fold compression, the sound quality of an MP3 file is reasonably good, even compared to that of a CD. *Id.* Indeed, Diamond advertises that MP3 "delivers the original CD-quality sound." *See* ER 47 (Declaration of Kenneth Wirt ("Wirt Decl."), Ex. E).

Plaintiffs have no objection to MP3 as a technology or its use in legitimate distribution channels. However, the Internet has been used extensively for the illicit circulation of pirated copies of copyrighted CD

sound recordings. *See* ER 83 (Supplemental Declaration of Francis Creighton ("Supp. Creighton Decl.") ¶ 5). MP3 is the principal audio compression format used for this piracy. *Id.* The overwhelming majority of MP3 music files on the Internet are unauthorized and illegal. *Id.* RIAA fights a constant battle to combat Internet piracy, particularly piracy involving the MP3 format. *Id.* ¶ 6. Despite RIAA's efforts, the proliferation of illegal MP3 music sites has not slowed, and music piracy on the Internet, especially in the MP3 format, remains a very serious problem. *Id.* ¶ 7.

C. Diamond's Rio Device

Diamond's Rio PMP 300 product is a solid-state Walkman®-like device designed to record and play back digital copies of CD music. *See* ER 91. Diamond has advertised that the Rio product will be bundled with "MusicMatch" and "Rio Manager" computer software. *See* ER 43 (Wirt Decl., Ex. E). The MusicMatch software is designed to copy and compress the tracks of a music CD, a process referred to in the MP3 world as "ripping."

Diamond intends users of the Rio device to rip copyrighted sound recordings from music CDs and copy them to their computers' hard drives in MP3 format. *See* ER 26-28 (Wirt Decl., Ex. C). After making those first generation copies, Rio users are instructed to attach the Rio device to their computer's parallel port using a cable, and then to use the Rio Manager

software to make second generation copies from the hard drive to the Rio device. *Id.* The Rio device can then be detached from the computer, and the user can listen to the twice-copied CD music away from the computer through headphones connected to the Rio device. *Id.* Thus, at the end of the intended process, the user has the original music CD, the first generation copy on the hard drive of his or her computer, and a second generation copy on the Rio device. Diamond intends also that Rio users copy MP3 files from the Internet to their computers' hard drives and then recopy these files to the Rio device. *Id.*

The Rio device cannot make copies directly from an audio CD; it can only recopy copies on a computer's hard drive – and therefore, the copy on the Rio device is always at least a second generation serial copy. The district court concluded, therefore, that the recording process utilized by the Rio device is "serial copying" within the meaning of the AHRA. *See* ER 104.

D. The Injury Threatened by Introduction of the Rio Device

While the proliferation of MP3 files over the Internet has been a serious problem for the recording industry, the scope of that problem has been bound by a natural limitation: MP3 files can be played only by computers, and enjoyed only while operating a computer. The introduction

of the Rio device – and a number of anticipated look-alike devices from other vendors – will change that by making MP3 files portable.

Diamond has emphasized this point in its own advertising. Diamond has claimed that the Rio device – by making MP3 music available away from the computer – would increase the demand for MP3 files. *See, e.g.*, ER 26-28 (Wirt Decl., Ex. C). Diamond's press release announcing the Rio device states that "MP3 is the most popular audio format on the Internet," but "[t]he biggest obstacle to mainstream adoption of digital music and audio has been the lack of portability and Rio solves that issue." *Id.* This growth of the MP3 format predicted by Diamond will have a dramatic adverse impact on plaintiffs and their members since most MP3 files available on the Internet consist of illegal copies of copyrighted CD music. *See* ER 83, 85 (Supp. Creighton Decl. ¶¶ 5, 16). The district court found that the Rio device "inevitably" will be used to copy "illegitimate music (e.g., copyrighted music illegally posted on the Internet)." ER 107.

The growth of illicit MP3 files will injure not only the record companies and artists whose work will be pirated, but also the music publishers, musicians, background singers, songwriters, and others whose existence is dependent on the revenues earned by record sales. *See* ER 54 (Declaration of Edward Murphy, President and Chief Executive Officer, National Music Publishers Association, Inc. ("Murphy Decl.") ¶ 4); ER 74

(Declaration of Bruce York, National Executive Director, American Federation of Television and Radio Artists ("York Decl.") ¶ 8); ER 70 (Declaration of Steve Young, International President, American Federation of Musicians of the United States and Canada AFL-CIO ("Young Decl.") ¶ 6); ER 51 (Declaration of Barry Coburn, Manager, Diamond Rio ("Coburn Decl.") ¶ 3); ER 57 (Declaration of Lewis M. Bachman, Executive Director, Songwriters Guild of America ("Bachman Decl.") ¶ 5); ER 61 (Declaration of Michael Greene, President and Chief Executive Officer, National Academy of Recording Arts & Sciences, Inc. ("Greene Decl.") ¶ 4).

In addition to displacing CD sales, the proliferation of illicit MP3 files threatens also to stifle the emerging market for legitimate digitally downloadable music and for AHRA-compliant digital music players and distribution systems. A representative of a subsidiary of AT&T involved in developing such a system noted the difficulty of competing with Diamond's Rio device:

> [T]he Rio will be a boon for the market for pirated MP3 music. Without fail, the availability of a product such as Rio – that records legitimate and illegitimate files indiscriminately – will encourage the further proliferation of unauthorized MP3 music.
>
> This will have potentially very serious implications for companies like *a2b* Music that are attempting to create systems and products that comply with the AHRA and that will foster the

> development of a legitimate commercial market for digitally distributed music. If Diamond is allowed to short cut the legally-mandated prohibitions on serial copying, that could have a significant and negative impact on the ability of a legitimate device to succeed in the market. Similarly, the expansion of the pirate MP3 market encouraged by the Rio device is likely to jeopardize the emergence of a legitimate market for digitally downloadable music.

ER 66 (Declaration of Lawrence S. Miller, Chief Operating Officer, *a2b* Music ("Miller Decl.") ¶¶ 7-8); *see also* ER 54 (Murphy Decl. ¶ 6).

E. The District Court's Ruling on Likelihood of Success on the Merits

1. Diamond's Rio Device Is a Digital Audio Recording Device

Diamond's principal argument below was that the Rio device is not a "digital audio recording device" within the meaning of the AHRA. The district court concluded, however, that plaintiffs had established a probability of success on the merits of that issue. *See* ER 106.

a. The Rio Device Has a Digital Recording Function

The AHRA defines a "digital audio recording device" as

> any machine or device of the type commonly distributed to individuals or for use by individuals, whether or not included with or as part of some other machine or device, the digital recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use . . .

17 U.S.C. § 1001 (3). Diamond contended that the Rio device does not meet this definition because it does not have a digital recording function. In denying the preliminary injunction, the district judge rejected that argument. *See* ER 102-104.

To play music on the Rio device away from the computer, an MP3 file must be copied to the memory in the Rio device. This MP3 file gets to the Rio memory through a copying process initiated by the user, using the computer programs supplied by Diamond. ER 78 (Supp. Pohlmann Decl. ¶ 5). The Rio Manager program causes the MP3 file to be read from the hard drive and transmitted to the Rio device through the computer's parallel port. *Id.* Once transmitted, the MP3 file is copied into the flash memory inside the Rio device. ER 79 (*Id.* ¶ 6). To perform this function, there occurs within the Rio device a physical process whereby transistors within the Rio device's flash memory are charged, positively or negatively, to record the MP3 file. *Id.* This recording function is very much like that of a DAT recorder or any other digital audio recording device that is capable of receiving a transmission from a computer. *Id.* ¶ 7. Once this process is complete, the Rio user still has a copy of the MP3 file on the hard drive of his or her computer, but also has a copy of the same MP3 file in the Rio device.

Diamond argued also that the Rio device is not a "digital audio recording device" within the meaning of the AHRA because it is a computer peripheral device, and as such, does not have an "independent" recording function. The district court recognized that the AHRA contains no such requirement of independence. ER 102-104.

b. The Rio Device Makes Digital Audio Copied Recordings

To be a digital audio recording device under Section 1001 (3), a device must be capable of making a "digital audio copied recording" which is defined as "a reproduction in a digital recording format of a digital musical recording, whether that reproduction is made directly from another digital musical recording *or indirectly from a transmission.*" 17 U.S.C. § 1001 (1) (emphasis added). Diamond argued in the district court that a digital audio copied recording must be reproduced directly from a digital musical recording without any intervening copying. The district court rejected that argument. *See* ER 96-102.

Under the AHRA, a "digital musical recording" is defined as:

> a material object – (i) in which are fixed, in digital recording format, only sounds, and material, statements, or instructions incidental to those fixed sounds, if any, and (ii) from which the sounds and material can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

17 U.S.C. § 1001 (5) (A). A commercially distributed music CD is the classic example of a "digital musical recording." A CD is a "material object." ER 80 (Supp. Pohlmann Decl. ¶ 11). Sounds are fixed in a music CD in a digital recording format, and those sounds can be perceived with the aid of a player. *Id.*

When a Rio user employs the product as intended by Diamond, he or she first uses the MusicMatch ripping software, or some other ripping software, to rip tracks from a CD and make a first generation copy on his or her computer's hard drive. The user then uses Diamond's Rio Manager software to make a second generation copy of the first generation copy in the flash memory of the Rio device. Both of these copies are "reproduction[s] in a digital format" of a digital musical recording – the original copyrighted CD. Similarly, when a track is ripped off a CD, posted to a pirate MP3 site, downloaded to a computer hard drive and copied to the Rio device, the serial copy made in the Rio memory is still a reproduction of the CD. That Rio reproduction is not made directly from the CD; it is made through intermediate transmissions. But the AHRA makes clear that a copy made indirectly by transmissions is still a copy of the original CD. *See* 17 U.S.C. § 1001 (1).

Nowhere in the definition of "serial copying" is it required that each and every copy in a chain of serial copies qualify as a "digital musical

recording" – what matters is that the original is a digital musical recording, typically a music CD. As the district court recognized:

> A conventional audio CD is a "digital audio musical recording," and the MP3 file "ripped" from an audio CD and stored on the hard drive is a "digital reproduction" of that "digital musical recording." Finally, the version in the Rio is a "duplication" of the "digital reproduction" on the hard drive. Although a personal computer is not a "digital audio recording device," the definition of "serial copying" in Section 1001 (11) does not require that the digital reproduction (i.e., the MP3 files on the hard drive) be generated by a "digital audio recording device."

ER 104.

2. Diamond's Rio Device Allows and, Indeed, Requires Serial Copying

The AHRA defines "serial copying" as "the duplication in a digital format of a copyrighted musical work or sound recording from a digital reproduction of a digital musical recording." 17 U.S.C. § 1001 (11). The district court concluded that the Rio device employs a serial copying process within the meaning of the AHRA. *See* ER 104.

Under the AHRA, all digital audio recording devices must incorporate a system that controls serial copying. Section 1002 (a) provides that no digital audio recording device may be marketed unless it controls such copying in one of three ways:

> No person shall import, manufacture, or distribute any digital audio recording device . . . that does not conform to:
>
> (1) the Serial Copy Management System;
>
> (2) a system that has the same functional characteristics as the Serial Copy Management System and requires that copyright and generation status information be accurately sent, received and acted upon between devices using the system's method of serial copying regulation and devices using the Serial Copying Management System; or
>
> (3) any other system certified by the Secretary of Commerce as prohibiting unauthorized serial copying.

17 U.S.C. § 1002 (a). The district court properly found that the Rio device does not incorporate the Serial Copy Management System, and therefore does not comply with the requirements of 17 U.S.C. § 1002 (a) (1). The district court also found that the Rio device does not fulfill the requirements of 17 U.S.C. § 1002 (a) (2), stating that:

> Subsection (a) (2) . . . only applies to a device that has a "system that has the same functional characteristics as the [SCMS] and requires that copyright and generation status information be accurately sent, received, and acted upon. . . ." Section (a) (2), therefore, applies only to devices with digital encoding systems that are similar – but not identical – to SCMS.
>
> Because the Rio does not have a digital encoding system, it does not fall under section (a) (2) . . . .

ER 106 (emphasis in original). It is undisputed that the Rio device does not incorporate any other system certified by the Secretary of Commerce as prohibiting unauthorized serial copying, as required by 17 U.S.C. § 1002 (a) (3). Indeed, to date, no such system has been certified by the Secretary of Commerce, and Diamond has sought no such certification for its Rio device.

Accordingly, since the Rio device is a digital audio recording device that does not comply with the serial copy management provisions of the AHRA, the district court concluded that Diamond was violating the AHRA. However, the district court characterized the violation as "technical," because in its view, the Secretary of Commerce will certify the Rio device as prohibiting unauthorized serial copying, even though the Rio device does nothing to inhibit unauthorized serial copying, and indeed operates exclusively through a serial copying process:

> Because a Rio with SCMS would not violate Section 1002, and because a Rio without SCMS is functionally equivalent to a Rio with SCMS, the Court is convinced that the Secretary of Commerce will conclude that the Rio adequately "prohibit[s] unauthorized serial copying" for purposes of subsection (a) (3). Accordingly, Defendant is only violating Section 1002 (a) in a most technical sense – by failing to acquire a certificate.

ER 106. The district court concluded from this analysis that plaintiffs' likelihood of succeeding on the merits was "mixed." *Id.*

F. The District Court's Ruling on Irreparable Injury

Having concluded that Diamond's AHRA violation was "technical," the district court then found that the balance of equities tipped in favor of Diamond. The district court rejected plaintiffs' argument that after establishing a likelihood of success on the merits, they were entitled to a presumption of irreparable harm. *See* ER 93-96.

Although the district judge had found at the temporary restraining order phase of the case that "the possibility of irreparable injury favors the issuance of a temporary restraining order" (ER 12; *see also* TRO Transcript at 44-45 (included in CR)), and although she concluded that "the Rio will inevitably be used to record . . . illegitimate music (e.g. copyrighted music illegally posted on the Internet)" (ER 107), she ruled that plaintiffs had "failed to establish any irreparable or incalculable injury." ER 108. Despite declarations submitted by representatives of virtually every segment of the music industry – music publishers, recording artists, musicians, background singers, the National Academy of Recording Arts & Sciences, and others – the district court rejected plaintiffs' contention that Diamond's planned distribution of over one million Rio devices in the next two years would cause them irreparable injury by dramatically stimulating the traffic in illegal MP3 files and thereby reducing the market for legitimate CDs. *See* ER 107; *see also* ER 66 (Miller Decl. ¶ 7); ER 54 (Murphy Decl. ¶ 4);

ER 74 (York Decl. ¶¶ 7-8); ER 70 (Young Decl. ¶ 5); ER 51 (Coburn Decl. ¶ 3); ER 57 (Bachman Decl. ¶ 5); ER 61 (Greene Decl. ¶ 4).

The district court ignored the point repeatedly made in Diamond's own promotional materials as well – that the growth of the MP3 format has been inhibited by the format's lack of portability. And the injury inflicted by the MP3 portability created by the Rio device will be impossible to stop even if plaintiffs ultimately prevail in the litigation because effective recall of Rio devices would be virtually impossible. *See* ER 12.

The harm the district court found that Diamond would suffer if an injunction were to issue consists of nothing more than loss of the revenues that Diamond would receive if it were permitted to continue its "technical" violation of the AHRA:

> In contrast, Defendant has offered credible evidence that an injunction would substantially impact its projected revenues from the sale of the Rio. Regardless of the accuracy of Defendant's estimate . . . . the Court is convinced that Defendant would at a minimum suffer multi-million dollar losses.

ER 108. The district judge stated also that to the extent that plaintiffs are injured through use of the Rio device, "this is precisely the type of injury for which the royalty provisions were adopted." ER 107-08. She failed to explain, however, why the AHRA's royalty provisions – designed to provide compensation to copyright owners for the *first* generation copies permitted

by the AHRA – would provide any compensation at all for the second or higher generation copies essential to operation of the Rio device, and specifically prohibited by the AHRA.

For these reasons, the district court entered its order denying the preliminary injunction on October 26, 1998. RIAA and AARC timely filed a notice of appeal on October 27, 1998.

SUMMARY OF THE ARGUMENT

The district court erred in finding that plaintiffs' likelihood of success on the merits was "mixed." The district court found that plaintiffs had established that the Rio device manufactured by defendant Diamond was a "digital audio recording device" within the meaning of the Audio Home Recording Act, that the Rio device can be used only by copying music to it through a serial copying process within the meaning of Section 1001 (11) of the AHRA, that the Rio device inevitably would be used to make unauthorized copies of copyrighted music, and that the Rio device does not employ any control over serial copying whatsoever. The district court did not find that plaintiffs had shown likely success on the merits only because the district court was "convinced that the Secretary of Commerce will conclude that the Rio adequately 'prohibit[s] unauthorized serial copying' for purposes of subsection (a) (3)," and that Diamond's AHRA violation was therefore only "technical." ER 106. But this creation of a "technical violation" exception to the plain language of the AHRA is unsupported by the statute or its legislative history, and is contrary to law.

Once this error of law is corrected, a preliminary injunction should issue. Under Section 1002 (a) (3), a digital audio recording device may be manufactured, imported, or distributed only if it conforms to a "system certified by the Secretary of Commerce as prohibiting unauthorized serial

copying." 17 U.S.C. § 1002 (a) (3). The decision as to whether or not to certify a system rests with the Secretary of Commerce, and must be made prior to the manufacture, importation, or distribution of a digital audio recording device. The AHRA does not give the district court the discretion to decide what the Secretary of Commerce *would* decide *if* presented with an application for certification. The only decision that Section 1002 (a) (3) gives to the district court is to determine if the digital audio recording device complies with a system that has already been certified by the Secretary of Commerce. In substituting its judgment for that of the Secretary, the district court committed error.

Even if the district court had such discretion under Section 1002 (a) (3), the AHRA requires that the system at issue be certified by the Secretary of Commerce as *prohibiting* unauthorized serial copying. *See* 17 U.S.C. § 1002 (a) (3). Yet prohibiting unauthorized serial copying is precisely what the district court found that the Rio device *never* does. The district court found that plaintiffs had established that the copying process utilized by the Rio device meets the definition of serial copying within the AHRA, and that the Rio device would be used to make unauthorized copies. The district court recognized that the Rio device is incapable of preventing serial copying under any circumstances, yet was "convinced that the Secretary of Commerce will conclude that the Rio adequately 'prohibit[s]

unauthorized serial copying' for purposes of subsection (a) (3)." These two conclusions are irreconcilable. As the Rio device is designed to be used for unauthorized serial copying within the meaning of the AHRA, the district court committed error in concluding that the Rio device would be certified as prohibiting such copying.

The district court's erroneous analysis of Section 1002 (a) (3) of the AHRA was the sole reason for its conclusion that the plaintiffs' likelihood of success on the merits was "mixed." The district court should have found that plaintiffs had shown probable success on the merits. Given such a finding, it would be error for the district court nonetheless to deny the motion for preliminary injunction because of the only injury it found would befall Diamond – loss of revenues received from sales of an illegal device. A party cannot be harmed for the purposes of a preliminary injunction if it is denied the ability to sell a product that contravenes a statute. It would be error to conclude that the harm to Diamond of losing the profits from illegal sales of a noncompliant product outweighed the harm done to legitimate record companies and recording artists from permitting Diamond to continue to violate the statute.

ARGUMENT

I. The Standard of Review for Errors of Law is Plenary

The grant or denial of a motion for preliminary injunction lies within the discretion of the district court, and such a decision is reversible "when the district court abused its discretion or based its decision on an erroneous legal standard or on clearly erroneous findings of fact." *Miller* v. *California Pac. Med. Ctr.*, 19 F.3d 449, 455 (9th Cir. 1994); *see also Does* v. *Chandler*, 83 F.3d 1150, 1152 (9th Cir. 1996); *Johnson Controls, Inc.* v. *Phoenix Control Sys., Inc.*, 886 F.2d 1173, 1174 (9th Cir. 1989); *Colorado River Indian Tribes* v. *Town of Parker*, 776 F.2d 846, 848 (9th Cir. 1985). A district judge abuses her discretion if she applies incorrect substantive law or an incorrect preliminary injunction standard or if she applies an acceptable preliminary injunction standard in a manner that results in an abuse of discretion. *Sardi's Restaurant Corp.* v. *Sardie*, 755 F.2d 719, 722-23 (9th Cir. 1985).

In this case, the district court committed errors of law in reaching its decision. Issues of law underlying the district court's preliminary injunction decision are reviewed de novo. *Does*, 83 F.3d at 1152; *see also Miller*, 19 F.3d at 455 ("'Where the district court is alleged to have relied on erroneous legal premises, review is plenary.'") (quoting *America W. Airlines* v. *National Mediation Bd.*, 986 F.2d 1252, 1258 (9th Cir. 1992)); *Colorado*

River Indian Tribes, 776 F.2d at 848 ("Conclusions of law upon which injunctive relief is based are freely reviewable.").

As demonstrated below, the district court committed error in its construction of the AHRA. As this Court has stated, "a district court's order is reversible for legal error . . . if, in applying the appropriate standards, the court misapprehended the law with respect to the underlying issues in litigation." *Sardi's*, 755 F.2d at 723. The district court erred also in its application of the preliminary injunction standard by inappropriately considering evidence advanced by Diamond that cannot establish irreparable injury as a matter of law. *See id.*, 755 F.2d at 723 ("To determine whether there has been an abuse of discretion, we must consider whether the decision was based on consideration of the relevant factors and whether there has been a clear error of judgment.") (internal quotations omitted).

II. The District Court Erred in Finding that Plaintiffs' Likelihood of Success on the Merits Was "Mixed"

A. The Secretary of Commerce's Certification Must Be Granted in Advance of the Manufacture, Importation, or Distribution of a Digital Audio Recording Device

The plaintiffs pleaded one claim in this case – that the importation, manufacture, and distribution of the Rio device by Diamond violates the Audio Home Recording Act. The district court analyzed the language and legislative history of the AHRA and determined that sale of the Rio device violates this statute. ER 106. Yet the district judge ruled that the plaintiffs had not shown a likelihood of prevailing on their claim of an AHRA violation because she viewed the violation as "technical," believing that the Secretary of Commerce *would* certify the Rio device *if* presented with such an application. *See* ER 106.

However, the AHRA provides, under Section 1002 (a) (3), that a device such as the Rio may be manufactured, imported or distributed only if it conforms to a "system certified by the Secretary of Commerce." 17 U.S.C. § 1002 (a) (3). The reference to the Secretary's certification decision appears in the past tense – the statute does not provide that a device may be distributed if it "would be" or "will be" certified by the Secretary. In order to distribute a digital audio recording device pursuant to Section 1002 (a)

(3), the distributor must *first* have the system used by the device to prohibit serial copying certified by the Secretary of Commerce.

The AHRA is not a codification of common law or a restatement of preexisting obligations. It is a new, comprehensive statutory scheme enacted to balance conflicting interests. Congress concluded that digital audio copying adversely affects copyright owners. Congress's solution was to require digital audio recording devices to prohibit unauthorized serial copying. *See* 17 U.S.C. § 1002 (a).

Recognizing that new technologies and devices may be unable to implement SCMS or work with other SCMS devices, however, Congress permitted devices to be sold that implement an alternative system certified by the Secretary of Commerce as prohibiting unauthorized serial copying. 17 U.S.C. § 1002 (a) (3). But to prevent this provision from becoming a loophole that would vitiate the entire statutory system, Congress set out three express limitations:

First, the system must be certified *by the Secretary of Commerce*. To assure consistency of application and to take advantage of administrative expertise, the decision is to be made by the Secretary, not on a case-by-case basis by the courts. A statutory delegation such as that in the AHRA vests primary jurisdiction with the agency rather than the courts. *See, e.g., United States* v. *General Dynamics Corp.*, 828 F.2d 1356, 1365 (9th Cir. 1987)

("The primary jurisdiction doctrine is thus essentially concerned with ensuring that administrative bodies possessed of both expertise and authority delegated by Congress pass on issues within their regulatory authority before consideration by the courts."); *see also Dahl* v. *HEM Pharmaceuticals Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993); *United States* v. *Yellow Freight Sys.*, 762 F.2d 737, 739 (9th Cir. 1985). This Court has stated that the invocation of the primary jurisdiction doctrine is not discretionary, but rather that "an issue is either within an agency's primary jurisdiction or it is not, and, if it is, a court may not act until the agency has made the initial determination. Failure to defer when the doctrine so mandates is reversible error." *General Dynamics Corp.*, 828 F.2d at 1364 n.15.

The district court's decision in this case would take the certification decision, which was delegated by Congress to the Secretary of Commerce, away from the Secretary. Indeed, the district court did not even order Diamond to seek approval for the Rio device from the Secretary before distributing its product. As a result of the district court's ruling, other manufacturers of similar devices may believe that they may distribute digital audio recording devices without the Secretary of Commerce's approval. By substituting its judgment for that of the Secretary of Commerce, the district court has altered the statutory scheme created by Congress in the AHRA.

Second, the system must be certified *prior* to manufacture or sale of a digital audio recording device incorporating it. Section 1002 (a) (3) was added to the AHRA in the final committee that considered the legislation, the Committee on the Judiciary of the House of Representatives. *See* H.R. Rep. 102-873, pt. 1 at 19 (1992). On the day that the ARHA passed the House and the Senate, Congressman Hughes, the Chairman of the Committee on the Judiciary's Subcommittee on Intellectual Property and Judicial Administration, stated that:

> The bill taken up today creates a three-tier approach: First the serial copy management system [SCMS] automatically qualifies as satisfying section 1002's requirements for regulating the serial copying of copyrighted works; second, any future system that has the same functional characteristics as SCMS and which requires that copyright and generation status information be accurately sent, received, and acted upon between devices using that system's method or serial copying regulation and devices using scms also automatically qualifies as satisfying section 1002; *third, other future systems that purport to regulate serial copying of copyrighted works must be certified in advance by the Secretary of Commerce before being distributed in digital audio recording devices.*

138 Cong. Rec. 26857 (1992) (emphasis added).

As part of its balancing of competing interests, Congress put the burden on device manufacturers to obtain certification before copyright

owners became exposed to the risks caused by offending devices. Diamond has never sought such certification from the Secretary of Commerce. Diamond's distribution of the Rio device without prior certification places other device manufacturers who attempt to comply with the statutory scheme and seek the Secretary of Commerce's certification prior to distribution at an extreme competitive disadvantage. Allowing Diamond to distribute the Rio device without first seeking certification contravenes both the language and the purpose of the AHRA.

Third, the issue to be decided by the Secretary is whether or not the system at issue *prohibits* unauthorized serial copying. Limiting or restricting serial copying is not enough. Unless the audio recording is uncopyrighted, or the copyright owner chooses to authorize serial copying, a system is required to *prohibit* serial copies from being made. The Rio device does not prohibit unauthorized serial copying; indeed, as discussed above, it requires serial copying.

Under the plain language of the AHRA, a device would have to meet all three of these requirements to satisfy Section 1002 (a) (3). Diamond's Rio device fails to meet any of the three. The district court exceeded its authority when it decided in advance of Diamond's seeking the certification required by the AHRA that the Secretary of Commerce would certify the system employed in the Rio device.

B. There is No "Technical Violation" Exception to the AHRA

Since Diamond has not sought or received certification from the Secretary of Commerce under Section 1002 (a) (3), its Rio device violates the ARHA. Yet the district court concluded that plaintiffs had shown only a "mixed" likelihood of success on the merits because Diamond "is only violating Section 1002 (a) in a most technical sense – by failing to acquire a certificate." ER 106. There is, however, no "technical violation" exception to the AHRA.

The AHRA establishes a comprehensive statutory scheme, entailing registration, royalty payments, and serial copy controls. It strikes a delicate balance among competing interests, and every part of that scheme is essential to achieve that result. The legislative history to the legislation spans over 1,500 pages of reports, hearings, debates, and technological details, and nowhere in that mass is there any suggestion that a violation of the statute could be accepted as "only technical."

A defendant may not escape statutory liability because a violation is technical. The Sixth Circuit Court of Appeals decision in *Investors Equity Group, Inc.* v. *Universal Symetrics Corp.*, 53 F.3d 159 (6th Cir. 1995), makes the point well. In that case, the plaintiffs sued for a violation of the Michigan Blue Sky Laws because "defendants neither registered the securities nor complied fully with the Michigan statutory requirements for

exemption." *Id.* at 160. The district court concluded that, although defendants had not timely filed the necessary forms, the violation was of "little practical significance," and entered judgment for the defendants. The Sixth Circuit reversed the district court's ruling, stating:

> The statute is clear in its requirements, and we must assume a legislative purpose to penalize the seller, or issuer of securities, who does not fulfill the Act's requirements.
>
> . . .
>
> [W]e are unable to find an exemption to the Act for violations which are only "technical" or, of little practical import. The Act specifies that a person who offers or sells securities "shall file . . . such forms as the administrator prescribes," or otherwise "shall be liable."

Id. at 163 (citation omitted); *see also Grant* v. *Imperial Motors*, 539 F.2d 506, 510 (5th Cir. 1976) (stating in reversing grant of summary judgment in favor of defendants on plaintiff's Truth in Lending Act claim that "once the court finds a violation, no matter how technical, it has no discretion with respect to the imposition of liability").[1]

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[1] Besides ignoring the plain language of the AHRA, the district court's creation of a "technical violation" exception contravenes traditional principles of statutory construction. "[W]here certain exceptions to a general prohibition are explicitly enumerated, no additional exceptions may be inferred, unless such purpose is clearly discerned." *United States* v. *Kirvan*, 86 F.3d 309, 314 (2d Cir. 1996) (rejecting the defendant's argument

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There are few examples in the law of statutory violations ever being accepted as "merely technical." And the distinctions between those cases – which typically involve statutory violations *by the government* justified by compelling reasons of *public policy* – demonstrate the inappropriateness of applying any such exception to Diamond's violation. For example, in *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 320 (1982), the plaintiffs had succeeded in demonstrating a likelihood that the Navy was in violation of the Federal Water Pollution Control Act (FWPCA), because the Navy had failed first to obtain the requisite permit from the Environmental Protection Agency before discharging pollutants in the waters surrounding Puerto Rico. However, because the challenged activities were naval operations necessary for the national defense, the district court did not enjoin them.

The district court did not suggest that the likelihood of success on the merits was "mixed," though, and did not simply permit the violations to continue; "[r]ecognizing that the violations of the Act must be cured," the

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that the Gun Control Act's definition of "firearm" which included an exception for antique guns should be read into the United States Sentencing Guidelines which contained no such exception); *see also Korherr* v. *Bumb*, 262 F.2d 157, 162 (9th Cir. 1958) ("[W]here words of exception [in a statute] are used, they are to be strictly construed to limit the exception.").

district court ordered the Navy to seek a permit. *Id.* at 310 (internal quotations omitted). The Supreme Court recognized that:

> The District Court did not face a situation in which a permit would very likely not issue, and the requirements and objective of the statute could therefore not be vindicated if discharges were permitted to continue. Should it become clear that no permit will be issued and that compliance with the FWPCA will not be forthcoming, the statutory scheme and purpose would require the court to reconsider the balance it has struck.

Id. at 320; *see also Northern Cheyenne Tribe* v. *Hodel*, 851 F.2d 1152 (9th Cir. 1988).

In contrast, the district court's order here does *nothing* to secure Diamond's compliance with the AHRA. The district judge did not direct Diamond to seek certification from the Secretary of Commerce. In failing to do anything to secure statutory compliance – in simply permitting Diamond to continue violating the law – the district court committed error.

C. A Device that Employs No Control Over Unauthorized Serial Copying Cannot be Said To Conform to a "System" that "Prohibit[s] Unauthorized Serial Copying"

If Diamond had sought certification from the Secretary, there is nothing in the record of this case to suggest that the Secretary would have granted it. The AHRA states that devices certified by the Secretary must

conform to a "system" that "prohibit[s] unauthorized serial copying." 17 U.S.C. § 1002 (a) (3). Yet the district judge found that serial copying within the meaning of the AHRA is an essential part of all Rio operation. The district court recognized that the Rio device is incapable of preventing serial copying under any circumstances, and that the Rio device would inevitably be used to make unauthorized copies of copyrighted recordings. The district judge abused her discretion to find that such a device would be certified as incorporating a *system* that *prohibits* unauthorized serial copying.

The district judge's conclusion appears to be based on her belief that "incorporating SCMS into the Rio device appears an exercise in futility" because a Rio "without SCMS is functionally equivalent to a Rio with SCMS." ER 105-06. This analysis misses the point.

Section 1002 (a) (3) does not require implementation of a system that acts like SCMS or is as good as SCMS. Section 1002 (a) (3) requires a system that "prohibits unauthorized serial copying." In fact, the "system" employed by the Rio device which the district judge believed to be acceptable is no system at all. The Rio device will copy *any* MP3 file on a user's hard drive, regardless of whether the file is authorized. In fact, the district judge found that the Rio device "will inevitably be used to record . . . illegitimate music." ER 107. It is incomprehensible how such a "system" could be found to prohibit unauthorized serial copying.

In the nineteen page opinion denying the preliminary injunction, the district court devoted eleven pages to consideration of the likelihood of success on the merits. In this eleven-page discussion, the only reason given by the district judge for her finding that plaintiffs had not shown that they were likely to succeed on the merits was her belief that the Secretary of Commerce would certify the Rio device as prohibiting serial copying under Section 1002 (a) (3) of the AHRA. The district court misinterpreted and misapplied Section 1002 (a) (3) of the AHRA in reaching this conclusion. The district court should have concluded that plaintiffs had shown that they were likely to succeed on the merits. Indeed, plaintiffs have already established a statutory violation.

III. The District Court Erred in Not Issuing a Preliminary Injunction

A. The District Court Erred in Not Finding a Presumption of Irreparable Harm

In denying preliminary injunctive relief, the district court rejected plaintiffs' contention that after establishing a likelihood of success on the merits, they were entitled to a presumption of irreparable harm. *See* ER 93-96. It is well established that such a presumption arises in copyright cases because "the copyright owner's right to exploit its work is unique," *Metro-*

Goldwyn-Mayer, Inc. v. *American Honda Motor Co.*, 900 F. Supp. 1287, 1301 (C.D. Cal. 1995), and because violation of that right creates circumstances that "will damage the copyright holder in incalculable and incurable ways," *Fisher-Price, Inc.* v. *Well-Made Toy Mfg. Corp.*, 25 F.3d 119, 124 (2d Cir. 1994). While the presumption of irreparable harm in copyright cases developed in infringement actions, the rationale for this presumption applies equally to violations of the AHRA – the AHRA too is designed to protect the ability of sound recording copyright owners to exploit their works.

The provisions of the AHRA requiring devices to control serial copying are designed to preserve and maintain plaintiffs' members' rights to reproduce and distribute digital copies of their recordings. *See* 17 U.S.C. § 106 (1), (3) (exclusive rights to reproduce and right to distribute). As the House Report on the AHRA notes:

> The genesis of this legislation was concern by copyright owners that the fidelity of digital reproductions of recorded music would lead to massive unauthorized copying, significantly displacing sales. SCMS was designed to provide a technological method of prohibiting such copying without impairing the sound quality.

H.R. Rep. No. 102-873, pt.1, at 18-19 (1992).

The district judge found further that the plaintiffs were not entitled to a presumption of irreparable harm because this case "does not raise issues of

'reputation,' 'quality of goods,' or consumer 'confusion.'" ER 95. However, these issues reflect only some of the problems created by copyright infringement. More important is the direct threat to the *exclusive* nature of the rights granted under copyright posed by the creation of illegitimate copies:

> [T]he public interest underlying the copyright law requires a presumption of irreparable harm, as long as there is, as here, adequate evidence of the expenditure of significant time, effort and money directed to the production of the copyrighted material. Otherwise, the rationale for protecting copyright, that of encouraging creativity, would be undermined . . . . Since Congress has elected to grant certain exclusive rights to the owner of a copyright in a protected work, it is virtually axiomatic that the public interest can only be served by upholding copyright protections and, correspondingly, preventing the misappropriation of the skills, creative energies, and resources which are invested in the protected work.

Apple Computer, Inc. v. *Franklin Computer Corp.*, 714 F.2d 1240, 1254-55 (3d Cir. 1983) (internal quotation and citation omitted).

In this case, the distribution of non-AHRA-compliant Rio devices would facilitate the proliferation of essentially perfect infringing copies of plaintiffs' members' works, a proliferation that would cause precisely the same harm to the copyright owners that is presumed from the unauthorized copying and distribution of the works themselves – "a loss of control of

distribution of its works." *Cabnetware Inc.* v. *Sullivan*, 22 U.S.P.Q.2d 1686, 1690 (E.D. Cal. 1991) (describing types of irreparable harm caused by copyright infringement); *see also Jackson* v. *MPI Home Video*, 694 F. Supp. 483, 488 (N.D. Ill. 1988) ("The market for plaintiff's own product is diminished and perhaps foreclosed by an infringing tape."); *RCA Records* v. *All-Fast Sys., Inc.*, 594 F. Supp. 335, 338 (S.D.N.Y. 1984) ("[T]he sale of copies disrupts the royalties-based contracts between artists and recording companies."); ER 85-86 (Supp. Creighton Decl. ¶ 18); ER 69 (Young Decl. ¶ 4); ER 61 (Greene Decl. ¶ 3).

As the district court observed at the temporary restraining order phase of this proceeding, the "tracking and recall of noncompliant devices would be virtually impossible" (ER 12), in the same way that the tracking and recall of illicit copies already sold to the public would be impossible in an infringement context. This type of "incalculable and incurable" injury, *Fisher-Price*, 25 F.3d at 124, should give rise to the same presumption of irreparable harm to plaintiffs.

B. The District Court Abused Its Discretion in Balancing the Equities

Even if this presumption did not apply, plaintiffs provided ample evidence that they would suffer irreparable injury if the distribution of the Rio device were not enjoined. In failing to give proper weight to this evidence, and in inappropriately considering Diamond's legally irrelevant

evidence, the district court abused its discretion. *See Sardi's*, 755 F.2d at 723 ("To determine whether there has been an abuse of discretion, we must consider whether the decision was based on consideration of the relevant factors and whether there has been a clear error of judgment. . . .").

1. The District Court Ignored Evidence of Irreparable Injury to Plaintiffs

Although the district judge had found only ten days earlier that "the possibility of irreparable injury favors the issuance of a temporary restraining order" (ER 12; *see also* TRO Transcript at 44-45 (included in CR)), she stated in denying the preliminary injunction that plaintiffs had "failed to establish any irreparable or incalculable injury." ER 108. The district court appeared to find that plaintiffs would suffer no irreparable injury because the "absence of the SCMS information does not cause the illegitimate uses" of the Rio device. ER 107 (emphasis in original). But the issue is not what causes the harmful uses of a noncompliant product, but rather the injury that plaintiffs would suffer as a result of the noncompliant product's unrestrained distribution.[2] The plaintiffs presented overwhelming evidence of such irreparable injury.

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[2] In any event, the issue is not SCMS information, but the absence of a system to prohibit unauthorized serial copying. And since it is serial

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By its own figures, Diamond expects to sell at least 50,000 Rio devices in the next three months alone, and over one million in the next two years. These devices will be sold without any limitation on what they can be used to copy. Indeed, the Rio product will come bundled with ripping software that allows users to make multiple generation copies of original audio CDs, in contravention of the AHRA. In addition, as the district court found, the Rio product can and will be used to copy illicit MP3 files from the Internet, without any capability to determine whether such copying is authorized. *See* ER 107. In either case, as the district court concluded, the copy in the Rio device would be a second or higher generation copy, exactly the type of copy that the AHRA and its requirement of a serial copying prohibition system are intended to prohibit. *See* ER 104.

Because the Rio product's unlimited copying feature will last for the entire life of the product, the illicit copying of plaintiffs' works made possible by Diamond – including the serial copying that is inconsistent with the AHRA – will continue even if plaintiffs ultimately prevail on the merits. This ability to create portable second and higher generation copies of digital recordings – made possible by Diamond's Rio device without regard to the

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copying that will injure the plaintiffs, the absence of such a system is precisely what will cause the injury.

statutory rules designed to govern it – will harm plaintiffs and the public interest by dramatically stimulating the traffic in illegal MP3 files. *See* ER 66 (Miller Decl. ¶ 7); ER 54 (Murphy Decl. ¶ 4); ER 74 (York Decl. ¶¶ 7-8); ER 70 (Young Decl. ¶ 5); ER 51 (Coburn Decl. ¶ 3); ER 57 (Bachman Decl. ¶ 5); ER 61 (Greene Decl. ¶ 4).

The district judge appeared to ignore declarations submitted by virtually every segment of the music industry – music publishers, recording artists, musicians, background singers, and others – which demonstrate that the distribution of thousands of Rio devices will cause them irreparable injury. The district court ignored also the point repeatedly made in Diamond's own promotional materials – that the growth of the MP3 format has been inhibited by the format's lack of portability. Diamond has claimed that the Rio device – by making MP3 music available away from the computer – would increase the popularity of MP3 files. *See, e.g.*, ER 26-28 (Wirt Decl., Ex. C). Since most MP3 files consist of illegal copies of copyrighted music, the adverse impact on plaintiffs and their members would be dramatic. *See* ER 83, 85 (Supp. Creighton Decl. ¶¶ 5, 16).

Despite the district court's suggestion to the contrary, the injury inflicted by the distribution of a device that exacerbates the unauthorized copying of copyrighted material *is* irreparable. For example, in granting a

preliminary injunction against the distribution of a device that would copy video games made by the plaintiff, Atari, the Court found:

> If [defendant] sells the PROM BLASTER and the buyers put it to its intended use, it is at least a fair inference that Atari will lose some sales, even if the copies thus made merely replace damaged copies. Because consumers do the copying, Atari can never know the extent of the copying or the extent of its loss. Those lost sales constitute immediate, irreparable harm sufficient to support the issuance of a preliminary injunction.

Atari, Inc. v. *JS&A Group, Inc.*, 597 F. Supp. 5, 10 (N.D. Ill. 1983). In a similar case, a district court in this Circuit enjoined the distribution of the "Super UFO" device which would have copied plaintiff Nintendo's video games, stating:

> Because the device in question permits duplication of genuine games, including new games as soon as they hit the market, the impact on Nintendo in terms of displacing original sales is substantial. Copying devices such as the Super UFO cause Nintendo to lose control over the distribution of its works, creating unquantifiable harm.

Nintendo of America, Inc. v. *Computer & Entertainment, Inc.*, No. C96-0187, 1996 WL 511619, at *5 (W.D. Wash. 1996). Plaintiffs submitted evidence that the Rio device, like the devices at issue in those cases, will cause copyright owners to lose control over the distribution of their works. This injury is irreparable.

The district judge disregarded further evidence that the distribution of the Rio device will stifle the emerging market for legitimate, AHRA-compliant digital music players and distribution systems, which would be forced to compete with Diamond's Rio device and its promise of unlimited free music. ER 66 (Miller Decl. ¶¶ 7-8); ER 54 (Murphy Decl. ¶ 6). The result of allowing a noncompliant device on the market contravenes the purpose and intent of the AHRA – to provide the public with access to digital audio technology that respects the rights of copyright owners and thus preserves and maintains the incentives for the creation of new works.

The district court committed error also in its misunderstanding of the royalty provisions of the AHRA. *See* 17 U.S.C. § 1003. The district court found that "to the extent Plaintiffs are injured through an illicit use of the Rio, this is precisely the type of injury for which the royalty provisions were adopted." ER 107-08. The AHRA's royalty provisions, however, are intended to compensate copyright owners for the copying done by digital audio recording devices that is *permitted* by the AHRA. A manufacturer of a device that complies with Section 1002's serial copy management provisions is still required to comply with the royalty provisions of Section 1003. These requirements are not alternatives – under the AHRA, a compliant device must both contain a system that prohibits serial copying *and* be subject to royalty payments.

The district court's statement with regard to the AHRA royalties suggests that it misunderstood the compromise struck by the AHRA, reflected in the Senate Report:

> Although the development of a workable copy limitation system was essential to the success of this legislation, it only resolved half of the problem. The design of an equitable royalty system which compensated the creators and copyright owners while also protecting the consumer and the consumer electronics industry was required before a compromise could be reached.

S. Rep. No. 102-294, at 38 (1992). The AHRA's royalty payments are not intended in any way to compensate plaintiffs and their members for the distribution of *noncompliant* devices as the district court suggested. Rather, they are intended to compensate plaintiffs for the copying done by compliant devices that is permitted under the AHRA, primarily the making of first generation copies. The district court's reasoning with respect to the AHRA's royalty payments is clearly erroneous. In the absence of preliminary injunctive relief, plaintiffs will suffer irreparable injury for which they will have no adequate compensation.

2. Lost Sales of an Illegal Device Are Not Injury To Warrant Denial of a Preliminary Injunction

In contrast to this evidence of irreparable injury submitted by plaintiffs and discounted by the district court in its opinion, the district court found that Diamond had "offered credible evidence that an injunction would substantially impact its projected revenues from the sale of the Rio." ER 108. This was the *only* injury to Diamond cited by the district court in its opinion. *Id.* It was error for the district court to consider losses accruing as a result of enforcing a statute in the balance of hardships to the parties. Diamond cannot be said to suffer hardship from being restrained from the manufacture and sale of illegal devices. In a copyright infringement action where plaintiffs had established likely success on the merits, the Court of Appeals for the Seventh Circuit stated:

> Even without the aid of that presumption [of irreparable harm], plaintiffs have clearly established irreparable harm.
>
> . . . .
>
> [Defendant's] only alleged hardship is the profits it would lose if enjoined from marketing K. C. Munchkin. This argument, however, "merits little equitable consideration." "Advantages built upon a deliberately plagiarized make-up do not seem to us to give the borrower any standing to complain that his vested interests will be disturbed."

Atari v. *North Am. Philips Consumer Elec. Corp.*, 672 F.2d 607, 620 (7th Cir. 1982) (citations omitted); *see also Concrete Mach. Co.* v. *Classic Lawn Ornaments, Inc.*, 843 F.2d 600, 612 (1st Cir. 1988) ("We believe, then, that a court's findings regarding likelihood of success in a copyright action, as in other actions . . . should be placed in the balance of the harms. This approach should prevent the unjust result of allowing an infringer to continue his activities, despite a strong showing of likelihood of success by the plaintiff, simply because the defendant's principal enterprise is infringement.") (citation omitted).

This Court has recognized that it is not a hardship to be forced to comply with the law. *See Cadence Design Sys., Inc.* v. *Avant! Corp.*, 125 F.3d 824, 829 (9th Cir. 1997), *cert. denied*, 118 S. Ct. 1795 (1998) ("In this circuit, as well as in other circuits, a defendant who knowingly infringes another's copyright 'cannot complain of the harm that will befall it when properly forced to desist from its infringing activities.'") (quoting *Triad Sys. Corp.* v. *Southeastern Express Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995)). Similarly, that expenditures were made in developing a noncompliant product should not be considered as a hardship. In reversing and remanding a preliminary injunction, this Court found that the district court had abused its discretion by failing to order the Secretary of the Interior, in completing

an environmental impact statement, to disregard evidence of the amount of money invested in an unlawful activity:

> [T]he injunction should have expressly prohibited the Secretary from considering the [lessees'] financial interests in completing the EIS. . . . A fortiori the investments should not be considered here when the lessees made their bids with full awareness of the Tribe's suit and chose to gamble on the EIS being adequate.

Northern Cheyenne Tribe, 851 F.2d at 1157 (citation omitted). Diamond developed a product that does not comply with a federal statute; it is not inequitable to require Diamond to forgo earning profits from such activity.

Moreover, injury in the form of lost revenues is compensable. *See Forest County Potawatomi Community of Wisc.* v. *Doyle*, 803 F. Supp. 1526, 1537 (W.D. Wisc. 1992), *appeal dismissed as moot*, 7 F.3d 238 (1993) (table) ("[L]ost profits do not constitute irreparable injury, barring exceptional circumstances."); *see also Colorado River Indian Tribes*, 776 F.2d at 851 ("[P]urely monetary injury is compensable, and thus not irreparable."). In an antitrust action where the only injury demonstrated by the plaintiff was lost revenue, this Court reversed the grant of the injunction, stating that:

> The [] lost revenues would be compensable by a damage award should the [plaintiff] ultimately prevail on the merits. The district court, therefore, proceeded upon the further erroneous legal

> premise that the type of injury it identified was irreparable and abused its discretion in improperly granting a preliminary injunction on the basis of such threatened injury.

Los Angeles Mem. Coliseum Comm'n v. *National Football League*, 634 F.2d 1197, 1202 (9th Cir. 1980); *see also Goldie's Bookstore, Inc.* v. *Superior Court of Cal.*, 739 F.2d 466, 471 (9th Cir. 1984). Plaintiffs posted a $500,000 bond for the temporary restraining order, and presumably would have been required to post at least as large a bond for the preliminary injunction. Diamond made no showing that recovery on the bond would be insufficient to compensate for lost sales should it somehow end up prevailing on the merits.

Since Diamond demonstrated no harm other than monetary loss from being unable to sell a noncompliant device, it failed to demonstrate any harm that should properly be considered in balancing the hardships to the parties. It would be an abuse of discretion for the district court to deny the preliminary injunction on the basis that the harm to Diamond of losing the profits from illegal sales of a noncompliant product outweighed the harm to legitimate record companies and recording artists from permitting continued violation of the statute.

CONCLUSION AND STATEMENT OF RELIEF SOUGHT

The district court committed error in concluding that plaintiffs' likelihood of success on the merits was "mixed" when plaintiffs established that Diamond's imminent manufacture, importation, and distribution of the Rio digital audio recording device would violate the Audio Home Recording Act. The district court abused its discretion in determining that the balance of equities tipped in favor of Diamond, which failed to demonstrate any threatened injury as a matter of law, and against the plaintiffs, who demonstrated a serious threat of irreparable injury.

The district court's denial of plaintiffs' motion for preliminary injunctive relief should be reversed.

Respectfully submitted,

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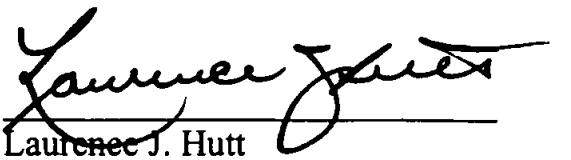
Dated: November 24, 1998

CERTIFICATION PURSUANT TO CIRCUIT RULE 32(e)(3)

Pursuant to Ninth Circuit Rule 32(e)(3), I certify that the opening brief is proportionately spaced, has a typeface of 14 points or more and contains 11,413 words.

Respectfully submitted,



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Dated: November 24, 1998

ADDENDUM 1

UNITED STATES CODE ANNOTATED

TITLE 17

Copyrights

§§ 501 to End

Comprising All Laws of a General
and Permanent Nature
Under Arrangement of the Official Code of
the Laws of the United States
with
Annotations from Federal and State Courts

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CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

SUBCHAPTER A—DEFINITIONS

Sec.
1001. Definitions.

SUBCHAPTER B—COPYING CONTROLS

1002. Incorporation of copying controls.

SUBCHAPTER C—ROYALTY PAYMENTS

1003. Obligation to make royalty payments.
1004. Royalty payments.
1005. Deposit of royalty payments and deduction of expenses.
1006. Entitlement to royalty payments.
1007. Procedures for distributing royalty payments.

SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION

1008. Prohibition on certain infringement actions.
1009. Civil remedies.
1010. Arbitration of certain disputes.

CROSS REFERENCES

Semiconductor chip product protection provisions relationship to this chapter, see 17 USCA § 1001.

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SUBCHAPTER A—DEFINITIONS

§ 1001. Definitions

As used in this chapter, the following terms have the following meanings:

(1) A "digital audio copied recording" is a reproduction in a digital recording format of a digital musical recording, whether that reproduction is made directly from another digital musical recording or indirectly from a transmission.

(2) A "digital audio interface device" is any machine or device that is designed specifically to communicate digital audio information and related interface data to a digital audio recording device through a nonprofessional interface.

(3) A "digital audio recording device" is any machine or device of a type commonly distributed to individuals for use by individuals, whether or not included with or as part of some other machine or device, the digital recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use, except for—

(A) professional model products, and

(B) dictation machines, answering machines, and other audio recording equipment that is designed and marketed primarily for the creation of sound recordings resulting from the fixation of nonmusical sounds.

(4)(A) A "digital audio recording medium" is any material object in a form commonly distributed for use by individuals, that is primarily marketed or most commonly used by consumers for the purpose of making digital audio copied recordings by use of a digital audio recording device.

(B) Such term does not include any material object—

(i) that embodies a sound recording at the time it is first distributed by the importer or manufacturer; or

(ii) that is primarily marketed and most commonly used by consumers either for the purpose of making copies of motion pictures or other audiovisual works or for the purpose of making copies of nonmusical literary works, including computer programs or data bases.

(5)(A) A "digital musical recording" is a material object—

(i) in which are fixed, in a digital recording format, only sounds, and material, statements, or instructions incidental to those fixed sounds, if any, and

(ii) from which the sounds and material can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

(B) A "digital musical recording" does not include a material object—

(I) in which the fixed sounds consist entirely of spoken word recordings, or

(II) in which one or more computer programs are fixed, except that a digital musical recording may contain statements or instructions constituting the fixed sounds and incidental material, and statements or instructions to be used directly or indirectly in order to bring about the perception, reproduction, or communication of the fixed sounds and incidental material.

(C) For purposes of this paragraph—

(I) a "spoken word recording" is a sound recording in which are fixed only a series of spoken words, except that the spoken words may be accompanied by incidental musical or other sounds, and

(II) the term "incidental" means related to and relatively minor by comparison.

(6) "Distribute" means to sell, lease, or assign a product to consumers in the United States, or to sell, lease, or assign a product in the United States for ultimate transfer to consumers in the United States.

(7) An "interested copyright party" is—

(A) the owner of the exclusive right under section 106(1) of this title to reproduce a sound recording of a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;

(B) the legal or beneficial owner of, or the person that controls, the right to reproduce in a digital musical recording or analog musical recording a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;

(C) a featured recording artist who performs on a sound recording that has been distributed; or

(D) any association or other organization—

(I) representing persons specified in subparagraph (A), (B), or (C), or

(II) engaged in licensing rights in musical works to music users on behalf of writers and publishers.

(8) To "manufacture" means to produce or assemble a product in the United States. A "manufacturer" is a person who manufactures.

(9) A "music publisher" is a person that is authorized to license the reproduction of a particular musical work in a sound recording.

(10) A "professional model product" is an audio recording device that is designed, manufactured, marketed, and intended for use by recording professionals in the ordinary course of a lawful business, in accordance with such requirements as the Secretary of Commerce shall establish by regulation.

(11) The term "serial copying" means the duplication in a digital format of a copyrighted musical work or sound recording from a digital reproduction of a digital musical recording. The term "digital reproduction of a digital musical recording" does not include a digital musical recording as distributed, by authority of the copyright owner, for ultimate sale to consumers.

(12) The "transfer price" of a digital audio recording device or a digital audio recording medium—

(A) is, subject to subparagraph (B)—

(i) in the case of an imported product, the actual entered value at United States Customs (exclusive of any freight, insurance, and applicable duty), and

(ii) in the case of a domestic product, the manufacturer's transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale); and

(B) shall, in a case in which the transferor and transferee are related entities or within a single entity, not be less than a reasonable arms-length price under the principles of the regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section.

(13) A "writer" is the composer or lyricist of a particular musical work.

(Added Pub.L. 102–563, § 2, Oct. 28, 1992, 106 Stat. 4237.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. House Report No. 102–873(Parts I and II) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3578.

Effective Dates

1992 Acts. Section 4 of Pub.L. 102–563 provided that: "This Act [enacting this chapter] and the amendments made by this Act [amending sections 101, 801, 803 and 912 of this title, and section 1337 of Title 19, Customs Duties] shall take effect on the date of the enactment of this Act [Oct. 28, 1992]."

Short Title

1992 Acts. Section 1 of Pub.L. 102–563 provided that: "This Act [enacting this chapter, amending sections 101, 801, 803, and 912 of this title, and section 1337 of Title 19, Customs Duties, and enacting provisions set out as a note un-

der this section] may be cited as the 'Audio Home Recording Act of 1992'."

LIBRARY REFERENCES

American Digest System

Subjects of copyrights; sound recordings, see Copyrights and Intellectual Property ⇐10.2.

Transfers of copyrights; licenses, see Copyrights and Intellectual Property ⇐48.

Encyclopedias

Copyrights; transfers and licenses, see C.J.S. Copyrights and Intellectual Property §§ 27 to 34.

What may be copyrighted; sound recordings, see C.J.S. Copyrights and Intellectual Property § 17.

WESTLAW ELECTRONIC RESEARCH

Copyrights and intellectual property cases: 99k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

SUBCHAPTER B—COPYING CONTROLS

§ 1002. Incorporation of copying controls

(a) Prohibition on Importation, Manufacture, and Distribution.—No person shall import, manufacture, or distribute any digital audio recording device or digital audio interface device that does not conform to—

(1) the Serial Copy Management System;

(2) a system that has the same functional characteristics as the Serial Copy Management System and requires that copyright and generation status information be accurately sent, received, and acted upon between devices using the system's method of serial copying regulation and devices using the Serial Copy Management System; or

(3) any other system certified by the Secretary of Commerce as prohibiting unauthorized serial copying.

(b) Development of Verification Procedure.—The Secretary of Commerce shall establish a procedure to verify, upon the petition of an interested party, that a system meets the standards set forth in subsection (a)(2).

(c) Prohibition on Circumvention of the System.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, a system described in subsection (a).

(d) Encoding of Information on Digital Musical Recordings.—

(1) Prohibition on encoding inaccurate information.—No person shall encode a digital musical recording of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material for the recording.

(2) Encoding of copyright status not required.—Nothing in this chapter requires any person engaged in the importation or manufacture of digital musical recordings to encode any such digital musical recording with respect to its copyright status.

(e) Information Accompanying Transmissions in Digital Format.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this chapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. Any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.

(Added Pub.L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4240.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1992 Acts. House Report No. 102-873(Parts I and II) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3578.

Effective Dates
1992 Acts. Section effective Oct. 28, 1992, see section 4 of Pub.L. 102-563, set out as a note under section 1001 of this title.

LIBRARY REFERENCES

American Digest System
Copyright infringement and remedies in general, see Copyrights and Intellectual Property ⇐51 et seq., 70 et seq.

Encyclopedias
Copyright infringement and remedies in general, see C.J.S. Copyrights and Intellectual Property § 40 et seq.

Law Review and Journal Commentaries
Information infrastructure. David Goldberg and Robert J. Bernstein, 212 N.Y.L.J. 3 (Sept. 16, 1994).

WESTLAW ELECTRONIC RESEARCH

Copyrights and intellectual property cases: 99k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

SUBCHAPTER C—ROYALTY PAYMENTS

§ 1003. Obligation to make royalty payments

(a) Prohibition on Importation and Manufacture.—No person shall import into and distribute, or manufacture and distribute, any

digital audio recording device or digital audio recording medium unless such person records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified in section 1004.

(b) **Filing of Notice.**—The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file with the Register of Copyrights a notice with respect to such device or medium, in such form and content as the Register shall prescribe by regulation.

(c) **Filing of Quarterly and Annual Statements of Account.**—

(1) **Generally.**—Any importer or manufacturer that distributes any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register of Copyrights, in such form and content as the Register shall prescribe by regulation, such quarterly and annual statements of account with respect to such distribution as the Register shall prescribe by regulation.

(2) **Certification, verification, and confidentiality.**—Each such statement shall be certified as accurate by an authorized officer or principal of the importer or manufacturer. The Register shall issue regulations to provide for the verification and audit of such statements and to protect the confidentiality of the information contained in such statements. Such regulations shall provide for the disclosure, in confidence, of such statements to interested copyright parties.

(3) **Royalty payments.**—Each such statement shall be accompanied by the royalty payments specified in section 1004.

(Added Pub.L. 102–563, § 2, Oct. 28, 1992, 106 Stat. 4240.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1992 Acts. House Report No. 102–873(Parts I and II) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3578.

Effective Dates
1992 Acts. Section effective Oct. 28, 1992, see section 4 of Pub.L. 102–563, set out as a note under section 1001 of this title.

CROSS REFERENCES

Copyright arbitration royalty panel royalty fee distribution from deposits under this section, see 17 USCA § 801.

Royalty payment obligations under this section during pendency of appeal, see 17 USCA § 802.

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LIBRARY REFERENCES

American Digest System

Copyright infringement and remedies in general, see Copyrights and Intellectual Property ⇐51 et seq., 70 et seq.

Notice of copyright; deposit and registration with copyright office, see Copyrights and Intellectual Property ⇐50.1 et seq., 50.10, 50.15 et seq.

Encyclopedias

Copyright infringement and remedies in general, see C.J.S. Copyrights and Intellectual Property § 40 et seq.

Notice of copyright; deposit and registration with copyright office, see C.J.S. Copyrights and Intellectual Property § 35 et seq.

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Copyrights and intellectual property cases: 99k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1004. Royalty payments

(a) Digital Audio Recording Devices.—

(1) Amount of payment.—The royalty payment due under section 1003 for each digital audio recording device imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 2 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such device shall be required to pay the royalty with respect to such device.

(2) Calculation for devices distributed with other devices.—With respect to a digital audio recording device first distributed in combination with one or more devices, either as a physically integrated unit or as separate components, the royalty payment shall be calculated as follows:

(A) If the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on the average transfer price of such devices during those 4 quarters.

(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be

based on a constructed price reflecting the proportional value of such device to the combination as a whole.

(3) **Limits on royalties.**—Notwithstanding paragraph (1) or (2), the amount of the royalty payment for each digital audio recording device shall not be less than $1 nor more than the royalty maximum. The royalty maximum shall be $8 per device, except that in the case of a physically integrated unit containing more than 1 digital audio recording device, the royalty maximum for such unit shall be $12. During the 6th year after the effective date of this chapter, and not more than once each year thereafter, any interested copyright party may petition the Librarian of Congress to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Librarian of Congress shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum; however the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.

(b) Digital Audio Recording Media.—The royalty payment due under section 1003 for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.

(Added Pub.L. 102–563, § 2, Oct. 28, 1992, 106 Stat. 4241, and amended Pub.L. 103–198, § 6(b)(1), Dec. 17, 1993, 107 Stat. 2312.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. House Report No. 102–873(Parts I and II) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3578.

1993 Acts. House Report No. 103–286, see 1993 U.S. Code Cong. and Adm. News, p. 2954.

References in Text

The effective date of this chapter, referred to in subsec. (a)(3), is Oct. 28, 1992, pursuant to section 4 of Pub.L. 102–563, set out as an Effective Date of 1992 Acts note under section 1001 of this title.

Amendments

1993 Amendments. Subsec. (a)(3). Pub.L. 103-198, § 6(b)(1)(A), substituted "Librarian of Congress" for "Copyright Royalty Tribunal" after "may petition the".

Pub.L. 103–198, § 6(b)(1)(B), substituted "Librarian of Congress" for "Tribunal" after "maximum, the".

Effective Dates

1993 Acts. Amendment by Pub.L. 103–198 effective Dec. 17, 1993, see section 7 of Pub.L. 103–198, set out as a note under section 801 of this title.

1992 Acts. Section effective Oct. 28, 1992, see section 4 of Pub.L. 102–563, set out as a note under section 1001 of this title.

LIBRARY REFERENCES

American Digest System

Copyright ownership, transfer, and license; royalties, see Copyrights and Intellectual Property ⇐41 et seq., 43 et seq., 48, 48.1.

Encyclopedias

Copyright ownership, transfer, and license; royalties, see C.J.S. Copyrights and Intellectual Property §§ 22 et seq., 27 et seq.

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Copyrights and intellectual property cases: 99k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1005. Deposit of royalty payments and deduction of expenses

The Register of Copyrights shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States as offsetting receipts, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1007. The Register may, in the Register's discretion, 4 years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

(Added Pub.L. 102–563, § 2, Oct. 28, 1992, 106 Stat. 4242, and amended Pub.L. 103–198, § 6(b)(2), Dec. 17, 1993, 107 Stat. 2312.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. House Report No. 102–873(Parts I and II) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3578.

1993 Acts. House Report No. 103–286, see 1993 U.S. Code Cong. and Adm. News, p. 2954.

Amendments

1993 Amendments. Pub.L. 103–198, § 6(b)(2), struck sentence which had directed the Register to submit to the Copyright Royalty Tribunal, on a monthly basis, a financial statement reporting the amount of royalties under this chapter that were available for distribution.

Effective Dates

1993 Acts. Amendment by Pub.L. 103–198 effective Dec. 17, 1993, see section 7 of Pub.L. 103–198, set out as a note under section 801 of this title.

1992 Acts. Section effective Oct. 28, 1992, see section 4 of Pub.L. 102–563, set out as a note under section 1001 of this title.

LIBRARY REFERENCES

American Digest System

Copyright ownership, transfer, and license; royalties, see Copyrights and Intellectual Property ⇐41 et seq., 43 et seq., 48, 48.1.

Encyclopedias

Copyright ownership, transfer, and license; royalties, see C.J.S. Copyrights and Intellectual Property §§ 22 et seq., 27 et seq.

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Copyrights and intellectual property cases: 99k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1006. Entitlement to royalty payments

(a) **Interested Copyright Parties.**—The royalty payments deposited pursuant to section 1005 shall, in accordance with the procedures specified in section 1007, be distributed to any interested copyright party—

(1) whose musical work or sound recording has been—

(A) embodied in a digital musical recording or an analog musical recording lawfully made under this title that has been distributed, and

(B) distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions, during the period to which such payments pertain; and

(2) who has filed a claim under section 1007.

(b) **Allocation of Royalty Payments to Groups.**—The royalty payments shall be divided into 2 funds as follows:

(1) **The Sound Recordings Fund.**—66⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. 2½ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians or any successor entity) who have performed on sound recordings distributed in the United States. 1⅙ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation [1] Television and Radio Artists or any successor entity) who have performed on sound recordings distributed in the United States. 40 percent of the remaining royalty payments in the Sound Recordings Fund shall be distributed to the interested copyright parties described in section 1001(7)(C), and 60 percent of such

remaining royalty payments shall be distributed to the interested copyright parties described in section 1001(7)(A).

(2) The Musical Works Fund.—

(A) 33⅓ percent of the royalty payments shall be allocated to the Musical Works Fund for distribution to interested copyright parties described in section 1001(7)(B).

(B)(i) Music publishers shall be entitled to 50 percent of the royalty payments allocated to the Musical Works Fund.

(ii) Writers shall be entitled to the other 50 percent of the royalty payments allocated to the Musical Works Fund.

(c) Allocation of Royalty Payments Within Groups.—If all interested copyright parties within a group specified in subsection (b) do not agree on a voluntary proposal for the distribution of the royalty payments within each group, the Librarian of Congress shall convene a copyright arbitration royalty panel which shall, pursuant to the procedures specified under section 1007(c), allocate royalty payments under this section based on the extent to which, during the relevant period—

(1) for the Sound Recordings Fund, each sound recording was distributed in the form of digital musical recordings or analog musical recordings; and

(2) for the Musical Works Fund, each musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions.

(Added Pub.L. 102–563, § 2, Oct. 28, 1992, 106 Stat. 4242, and amended Pub.L. 103–198, § 6(b)(3), Dec. 17, 1993, 107 Stat. 2312.)

[1] So in original. Probably should be "Federation of".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. House Report No. 102–873(Parts I and II) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3578.

1993 Acts. House Report No. 103–286, see 1993 U.S. Code Cong. and Adm. News, p. 2954.

Amendments

1993 Amendments. Subsec. (c). Pub.L. 103–198, § 6(b)(3), substituted "Librarian of Congress shall convene a copyright arbitration royalty panel which" for "Copyright Royalty Tribunal" in introductory provisions.

Effective Dates

1993 Acts. Amendment by Pub.L. 103–198 effective Dec. 17, 1993, see section 7 of Pub.L. 103–198, set out as a note under section 801 of this title.

1992 Acts. Section effective Oct. 28, 1992, see section 4 of Pub.L. 102–563, set out as a note under section 1001 of this title.

CROSS REFERENCES

Information submission to arbitration panel by interested copyright party who claims entitlements to royalties under this section, see 17 USCA § 802.

LIBRARY REFERENCES

American Digest System

Copyright ownership, transfer, and license; royalties, see Copyrights and Intellectual Property ⇐41 et seq., 43 et seq., 48, 48.1.

Encyclopedias

Copyright ownership, transfer, and license; royalties, see C.J.S. Copyrights and Intellectual Property §§ 22 et seq., 27 et seq.

WESTLAW ELECTRONIC RESEARCH

Copyrights and intellectual property cases: 99k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1007. Procedures for distributing royalty payments

(a) Filing of Claims and Negotiations.—

(1) Filing of claims.—During the first 2 months of each calendar year after the calendar year in which this chapter takes effect, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Librarian of Congress a claim for payments collected during the preceding year in such form and manner as the Librarian of Congress shall prescribe by regulation.

(2) Negotiations.—Notwithstanding any provision of the antitrust laws, for purposes of this section interested copyright parties within each group specified in section 1006(b) may agree among themselves to the proportionate division of royalty payments, may lump their claims together and file them jointly or as a single claim, or may designate a common agent, including any organization described in section 1001(7)(D), to negotiate or receive payment on their behalf; except that no agreement under this subsection may modify the allocation of royalties specified in section 1006(b).

(b) Distribution of Payments in the Absence of a Dispute.—Within 30 days after the period established for the filing of claims under subsection (a), in each year after the year in which this section takes effect, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Librarian of Congress determines that no such controversy exists, the Librarian of Congress shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a), after deducting its reasonable administrative costs under this section.

(c) Resolution of Disputes.—If the Librarian of Congress finds the existence of a controversy, the Librarian shall, pursuant to chapter 8

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of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty payments. During the pendency of such a proceeding, the Librarian of Congress shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Librarian of Congress shall, before authorizing the distribution of such royalty payments, deduct the reasonable administrative costs incurred by the Librarian under this section.

(Added Pub.L. 102–563, § 2, Oct. 28, 1992, 106 Stat. 4244, and amended Pub.L. 103–198, § 6(b)(4), Dec. 17, 1993, 107 Stat. 2312.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. House Report No. 102–873(Parts I and II) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3578.

1993 Acts. House Report No. 103–286, see 1993 U.S. Code Cong. and Adm. News, p. 2954.

References in Text

The calendar year in which this chapter takes effect, and the year in which this section takes effect, referred to in subsecs. (a)(1) and (b), respectively, are 1992. See Effective Date of 1992 Acts note set out under section 1001 of this title.

Amendments

1993 Amendments. Subsec. (a)(1). Pub.L. 103–198, § 6(b)(4)(A)(i), substituted "Librarian of Congress" for "Copyright Royalty Tribunal" after "shall file with the".

Pub.L. 103–198, § 6(b)(4)(A)(ii), substituted "Librarian of Congress" for "Tribunal" after "manner as the".

Subsec. (b). Pub.L. 103–198, § 6(b)(4)(B)(i), substituted "Librarian of Congress" for "Copyright Royalty Tribunal" after "takes effect, the".

Pub.L. 103–198, § 6(b)(4)(B)(ii), substituted "Librarian of Congress" for "Tribunal" after "If the" and again after "exist, the".

Subsec. (c). Pub.L. 103–198, § 6(b)(4)(C)(i), substituted "If the Librarian of Congress finds the existence of a controversy, the Librarian shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty payments" for "If the Tribunal find the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments" as the first sentence.

Pub.L. 103–198, § 6(b)(4)(C)(ii), substituted "Librarian of Congress" for "Tribunal" wherever appearing in the second and third sentences.

Pub.L. 103–198, § 6(b)(4)(C)(iii), substituted "the reasonable administrative costs incurred by the Librarian" for "its reasonable administrative costs" in the third sentence.

Effective Dates

1993 Acts. Amendment by Pub.L. 103–198 effective Dec. 17, 1993, see section 7 of Pub.L. 103–198, set out as a note under section 801 of this title.

1992 Acts. Section effective Oct. 28, 1992, see section 4 of Pub.L. 102–563, set out as a note under section 1001 of this title.

CROSS REFERENCES

Federal Register publication of notice of commencement of arbitration panel proceedings for royalty fee distribution under this section, see 17 USCA § 803.

LIBRARY REFERENCES

Administrative Law
Digital audio recording devices and media, royalties, see 37 C.F.R. § 259.1 et seq.

American Digest System
Copyright ownership, transfer, and license; royalties, see Copyrights and Intellectual Property ⇐41 et seq., 43 et seq., 48, 48.1.

Encyclopedias
Copyright ownership, transfer, and license; royalties, see C.J.S. Copyrights and Intellectual Property §§ 22 et seq., 27 et seq.

WESTLAW ELECTRONIC RESEARCH

Copyrights and intellectual property cases: 99k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION

§ 1008. Prohibition on certain infringement actions

No action may be brought under this title alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings.

(Added Pub.L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4244.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1992 Acts. House Report No. 102-873(Parts I and II) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3578.

Effective Dates
1992 Acts. Section effective Oct. 28, 1992, see section 4 of Pub.L. 102-563, set out as a note under section 1001 of this title.

CROSS REFERENCES

International Trade Commission termination of investigation into matters under this section, see 19 USCA § 1337.

LIBRARY REFERENCES

American Digest System
Rights conferred by copyright; infringement of copyright and remedies, see Copyrights and Intellectual Property ⇐51 et seq., 70 et seq.

Encyclopedias
Rights conferred by copyright; infringement of copyright and remedies, see C.J.S. Copyrights and Intellectual Property §§ 40 et seq., 62 et seq.

WESTLAW ELECTRONIC RESEARCH

Copyrights and intellectual property cases: 99k[add key number].

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See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1009. Civil remedies

(a) Civil Actions.—Any interested copyright party injured by a violation of section 1002 or 1003 may bring a civil action in an appropriate United States district court against any person for such violation.

(b) Other Civil Actions.—Any person injured by a violation of this chapter may bring a civil action in an appropriate United States district court for actual damages incurred as a result of such violation.

(c) Powers of the Court.—In an action brought under subsection (a), the court—

(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain such violation;

(2) in the case of a violation of section 1002, or in the case of an injury resulting from a failure to make royalty payments required by section 1003, shall award damages under subsection (d);

(3) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof; and

(4) in its discretion may award a reasonable attorney's fee to the prevailing party.

(d) Award of Damages.—

(1) Damages for section 1002 or 1003 violations.—

(A) Actual damages.—(i) In an action brought under subsection (a), if the court finds that a violation of section 1002 or 1003 has occurred, the court shall award to the complaining party its actual damages if the complaining party elects such damages at any time before final judgment is entered.

(ii) In the case of section 1003, actual damages shall constitute the royalty payments that should have been paid under section 1004 and deposited under section 1005. In such a case, the court, in its discretion, may award an additional amount of not to exceed 50 percent of the actual damages.

(B) Statutory damages for section 1002 violations.—

(i) Device.—A complaining party may recover an award of statutory damages for each violation of section 1002(a) or (c) in the sum of not more than $2,500 per

device involved in such violation or per device on which a service prohibited by section 1002(c) has been performed, as the court considers just.

(ii) **Digital musical recording.**—A complaining party may recover an award of statutory damages for each violation of section 1002(d) in the sum of not more than $25 per digital musical recording involved in such violation, as the court considers just.

(iii) **Transmission.**—A complaining party may recover an award of damages for each transmission or communication that violates section 1002(e) in the sum of not more than $10,000, as the court considers just.

(2) **Repeated violations.**—In any case in which the court finds that a person has violated section 1002 or 1003 within 3 years after a final judgment against that person for another such violation was entered, the court may increase the award of damages to not more than double the amounts that would otherwise be awarded under paragraph (1), as the court considers just.

(3) **Innocent violations of section 1002.**—The court in its discretion may reduce the total award of damages against a person violating section 1002 to a sum of not less than $250 in any case in which the court finds that the violator was not aware and had no reason to believe that its acts constituted a violation of section 1002.

(e) **Payment of Damages.**—Any award of damages under subsection (d) shall be deposited with the Register pursuant to section 1005 for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1003.

(f) **Impounding of Articles.**—At any time while an action under subsection (a) is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1002.

(g) **Remedial Modification and Destruction of Articles.**—In an action brought under subsection (a), the court may, as part of a final judgment or decree finding a violation of section 1002, order the remedial modification or the destruction of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that—

(1) does not comply with, or was involved in a violation of, section 1002, and

(2) is in the custody or control of the violator or has been impounded under subsection (f).

(Added Pub.L. 102-563, § 2, Oct. 28, 1992, 106 Stat. 4245.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1992 Acts. House Report No. 102-873(Parts I and II) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3578.

Effective Dates
1992 Acts. Section effective Oct. 28, 1992, see section 4 of Pub.L. 102-563, set out as a note under section 1001 of this title.

LIBRARY REFERENCES

American Digest System
Rights conferred by copyright; infringement of copyright and remedies, see Copyrights and Intellectual Property ⇐51 et seq., 70 et seq.

Encyclopedias
Rights conferred by copyright; infringement of copyright and remedies, see C.J.S. Copyrights and Intellectual Property §§ 40 et seq., 62 et seq.

WESTLAW ELECTRONIC RESEARCH

Copyrights and intellectual property cases: 99k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1010. Arbitration of certain disputes

(a) Scope of Arbitration.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to binding arbitration for the purpose of determining whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

(b) Initiation of Arbitration Proceedings.—Parties agreeing to such arbitration shall file a petition with the Librarian of Congress requesting the commencement of an arbitration proceeding. The petition may include the names and qualifications of potential arbitrators. Within 2 weeks after receiving such a petition, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of an arbitration proceeding. Such notice shall include the names and qualifications of 3 arbitrators chosen by the Librarian of Congress from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Librarian of Congress shall select, and from potential arbitrators listed in the parties' petition. The arbitrators selected under this subsection shall constitute an Arbitration Panel.

(c) **Stay of Judicial Proceedings.**—Any civil action brought under section 1009 against a party to arbitration under this section shall, on application of one of the parties to the arbitration, be stayed until completion of the arbitration proceeding.

(d) **Arbitration Proceeding.**—The Arbitration Panel shall conduct an arbitration proceeding with respect to the matter concerned, in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any party to the arbitration may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

(e) **Report to Librarian of Congress.**—Not later than 60 days after publication of the notice under subsection (b) of the initiation of an arbitration proceeding, the Arbitration Panel shall report to the Librarian of Congress its determination concerning whether the device concerned is subject to section 1002, or the basis on which royalty payments for the device are to be made under section 1003. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination.

(f) **Action by the Librarian of Congress.**—Within 60 days after receiving the report of the Arbitration Panel under subsection (e), the Librarian of Congress shall adopt or reject the determination of the Panel. The Librarian of Congress shall adopt the determination of the Panel unless the Librarian of Congress finds that the determination is clearly erroneous. If the Librarian of Congress rejects the determination of the Panel, the Librarian of Congress shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting forth the Librarian's decision and the reasons therefor. The Librarian of Congress shall cause to be published in the Federal Register the determination of the Panel and the decision of the Librarian of Congress under this subsection with respect to the determination (including any order issued under the preceding sentence).

(g) **Judicial Review.**—Any decision of the Librarian of Congress under subsection (f) with respect to a determination of the Arbitration Panel may be appealed, by a party to the arbitration, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this subsection shall not stay the decision of the Librarian of Congress. The court shall have jurisdiction to modify or vacate a decision of the Librarian of Congress only if it finds, on the basis of the record before the Librarian of Congress, that the Arbitration Panel or the Librarian of Congress acted in an arbitrary manner. If the court modifies the decision of

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the Librarian of Congress, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the decision of the Librarian of Congress and remand the case for arbitration proceedings as provided in this section.

(Added Pub.L. 102–563, § 2, Oct. 28, 1992, 106 Stat. 4246, and amended Pub.L. 103–198, § 6(b)(5), Dec. 17, 1993, 107 Stat. 2312.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. House Report No. 102–873(Parts I and II) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3578.

1993 Acts. House Report No. 103–286, see 1993 U.S. Code Cong. and Adm. News, p. 2954.

Amendments

1993 Amendments. Subsec. (b). Pub.L. 103–198, § 6(b)(5)(A), substituted "Librarian of Congress" for "Copyright Royalty Tribunal" before "requesting the commencement" and for "Tribunal" wherever appearing.

Subsec. (e). Pub.L. 103–198, § 6(b)(5)(B), substituted "Librarian of Congress" for "Copyright Royalty Tribunal" in heading and text.

Subsec. (f). Pub.L. 103–198, § 6(b)(5)(C), substituted "Librarian of Congress" for "Copyright Royalty Tribunal" in heading and before "shall adopt or reject" in text, substituted "Librarian of Congress" for "Tribunal" wherever appearing, and substituted "the Librarian's" for "its".

Subsec. (g). Pub.L. 103–198, § 6(b)(5)(D), substituted "Librarian of Congress" for "Copyright Royalty Tribunal" after "Any decision of the", "decision of the Librarian of Congress" for "Tribunal's decision" in second sentence, and "Librarian of Congress" for "Tribunal" wherever appearing in third through fifth sentences.

Effective Dates

1993 Acts. Amendment by Pub.L. 103–198 effective Dec. 17, 1993, see section 7 of Pub.L. 103–198, set out as a note under section 801 of this title.

1992 Acts. Section effective Oct. 28, 1992, see section 4 of Pub.L. 102–563, set out as a note under section 1001 of this title.

LIBRARY REFERENCES

American Digest System

Agreements to arbitrate, and proceedings in general, see Arbitration ⇐6 et seq., 31 et seq.

Rights conferred by copyright; infringement of copyright and remedies, see Copyrights and Intellectual Property ⇐51 et seq., 70 et seq.

Encyclopedias

Agreements to arbitrate, and proceedings in general, see C.J.S. Arbitration §§ 7 et seq., 76 et seq.

Rights conferred by copyright; infringement of copyright and remedies, see C.J.S. Copyrights and Intellectual Property §§ 40 et seq., 62 et seq.

WESTLAW ELECTRONIC RESEARCH

Arbitration cases: 33k[add key number].

Copyrights and intellectual property cases: 99k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

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SUBCHAPTER B—COPYING CONTROLS

§ 1002. Incorporation of copying controls

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Applicability of this section to mechanical royalties in digital phonorecord deliveries, see 17 USCA § 115.

Scope of exclusive rights in sound recordings accompanied by information encoded, see 17 USCA § 114.

SUBCHAPTER C—ROYALTY PAYMENTS

§ 1006. Entitlement to royalty payments

[See main volume for text of (a)]

(b) **Allocation of Royalty Payments to Groups.**—The royalty payments shall be divided into 2 funds as follows:

(1) **The Sound Recordings Fund.**—66⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. 2½ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians or any successor entity) who have performed on sound recordings distributed in the United States. 1½ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation of Television and Radio Artists or any successor entity) who have performed on sound recordings distributed in the United States. 40 percent of the remaining royalty payments in the Sound Recordings Fund shall be distributed to the interested copyright parties described in section 1001(7)(C), and 60 percent of such remaining royalty payments shall be distributed to the interested copyright parties described in section 1001(7)(A).

[See main volume for text of (2); (c)]

(As amended Pub.L. 105-80, § 12(a)(24), Nov. 13, 1997, 111 Stat 1535.)

HISTORICAL AND STATUTORY NOTES

Amendments

1997 Amendments. Subsec. (b)(1). Pub.L. 105-80, § 12(a)(24), substituted "Federation of Television" for "Federation Television".

Effective Dates

1997 Acts. Amendments by Pub.L. 105-80 effective Nov. 13, 1997, see section 13 of Pub.L. 105-80, set out as a note under section 119 of this title.

§ 1007. Procedures for distributing royalty payments

(a) **Filing of Claims and Negotiations.**—

(1) **Filing of claims.**—During the first 2 months of each calendar year after calendar year 1992, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Librarian of Congress a claim for payments collected during the preceding year in such form and manner as the Librarian of Congress shall prescribe by regulation.

[See main volume for text of (2)]

(b) **Distribution of Payments in the Absence of a Dispute.**—After the period established for the filing of claims under subsection (a), in each year after 1992, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Librarian of Congress

determines that no such controversy exists, the Librarian of Congress shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a), after deducting its reasonable administrative costs under this section.

[See main volume for text of (c)]

(As amended Pub.L. 105–80, §§ 9, 12(a)(25), Nov. 13, 1997, 111 Stat. 1534, 1535.)

HISTORICAL AND STATUTORY NOTES

Amendments

1997 Amendments. Subsec. (a). pub.L. 105–80, § 12(a)(25)(A), substituted "calendar year 1992" for "the calendar year in which this chapter takes effect".

Subsec. (b). Pub.L. 105–80, § 9, substituted "After" for "Within 30 days after" preceding "the period established".

Pub.L. 105–80, § 12(a)(25)(B), substituted "1992" for "the year in which this section takes effect".

Effective Dates

1997 Acts. Amendments by Pub.L. 105–80 effective Nov. 13, 1997, see section 13 of Pub.L. 105–80, set out as a note under section 119 of this title.

SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION

§ 1008. Prohibition on certain infringement actions

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DreamWorks SKG
DreamWorks Uptown
Duck
DV8
E Pluribus Unum
Earache
Eardrum
Earthbeat
East West Records
East West America
ECM
Edito Classico
Elektra Entertainment Group Elektra/Musician
Elektra Asylum Records
Elephant
EMI-Capitol Ent. Properties
EMI Christian Music Group
EMI Gospel Music
EMI Latin
EMI Music Distribution
Energy
Epic Street
Epic Associated Labels
Epic Home Video
Epic Records Group
Epic Soundtrax
Epitaph
Epidrome
Erato
Esparanza Records
Essential Classics
Eurodisc
Everland
Exercise Video
Face the Music
Fantasy
Fat Wreck Chords
Fever
FFRR
Finlandia
Finnadar
First Warning
First Priority Music
Flavor Unit Records
Flying Tart
Flyte Tyme Records
FonoVisa, Inc.
Fontana
Forefront
Fox Music Group
Fox Records
Freeworld Recordings/ CZ Records/Freeworld Music/Global Soul/NGRecords/Out of Control/Pavement
Frontier Records
Full Moon Records
Fully Loaded
Gang of Seven
Gasoline Alley
Gazillion
Gee Street
Geffen Goldline
Geffen/DGC Records
Giant Records
Golden Books
Gold Seal
Good News
Gospocentric
Gotee
Gramavision
Grateful Dead Records
Great Performances
Greenside Records
Grindcore
Groovetown
GRP Recording Company
GTS Records
Guardian
Guitar Recordings
Hall of Fame
Harmony Records
Heads Up
Heartcry
Higher Octave
High Street
Hightone Records
Hippo
Hitsville

Hola Records
Hollywood Records
Home Sweet Home
Homeland
Hoppoh/Columbia
House of Blues
Hughes Brother
Hush Ent.
Hybrid
Hyperdisk
I AM Entertainment
I.R.S. Records
Ichiban
ie Music
Imaginary Road
Imago Recording Company
Immediate
Immortal
Impact Records
Impulse Records
Independent Network Co.
Infinity Digital
Infrared Music Group
(IMG) Interscope Records
Island Records Group
Island Black Music
Jazz
Jake
Jeff Robinson
Jersey Films
Jim Henson Records
Jireh
Jive Records
Jive/Amaru/Benson/ Brentwood Music/Cedarmont/Kids/ Reunion/Sick Wid It/Silvertone/Sound Mex/Verity/Zomba Group
Joe Entertainment
JRS Records
Karen
Kelit-Aurora Record Corp.
Kid Rhino
King Biscuit/Oxygen/Pet Rock/Silver Eagle
King Communications
Kings Way
Knitting Factory
Krasnow
LaFace
Latin
Left Eye
Legacy/Columbia
Legacy/Epic
Legato
Light
Lightstorm
Lightyear Entertainment
Lil Man
Lil' Joe
Limelight Jazz
Little Dog
Little David
Live Home Video
Living Stereo
Lobster Records
Logic Records
London International
London U.S.
London Records
Lonely Planet
Loose Groove
Loot
Loud Records
Luakabop
Luna Music, Inc.
LV
Lyle Rising Tide
M&G Records
Magnet Records
Malaco Records
Mammoth Records
Manga
Manticore
Maranatha!
Margaritaville Records
Marinda Grace
Masterworks
Masterworks Heritage
Masterworks Portrait
Matador Records
Maverick Recording
Max Music
MCA Records - L.A.
MCA Records
MCA Nashville/Decca
MCA Classics
McGhee Records
Mechanic
Medicine
Megaforce Entertainment
Melodiya
Mercury Nashville
Mercury Records
Mesa/Bluemoon
Metal Blade Records
Mighty Horn
Milan
Milan/Jade Records
Millenium
Minty Fresh
Mirage
Miramar
MJJ Records
Modern Records
Modern Art
Mojo
Mondo
Monument
Moon
Moon Shine
Mordam
Morgan Creek Music Group
Mosh
Motown Record Company L.P.
Moulin D'Or Recordings
MTV
Music For Little People
Musical Productions
Musicmaster
Mute Records
Myrrh
N2K Encoded Music
Narada Records
Nas
Nation Records
ND Golf
Nettwerk

New Deal
NFL Films
Nick @ Nite
Nimbus
Nitro
No Face
Nonesuch
Nonesuch/Musician
Noo Trybe
Noptee
Nothing
November
Novus
NPG
nu. millenia
Nude
NYC
Oasis
Observed
Oceana
Ode 2 Kids
Odyssey
Odyssey in Minds Eye
Oid Mortales Records
Okeh
Omni
One Little Indian
One Globe Music
Opal
Organized Noise
Orpheus
Outburst
Outpost
P.R.O.
Pacific Arts Audio
Pagan America
Pakaderm
Pallas
Palma Music
Pandisc/Streetbeat
Papillon
Parachute
Patriot Records
Pavement
Payaso
Pendulum Records
Perspective
Philadelphia International
Philips Classics
Philips
PIMA
Pioneer Music Group
Platino Records
Platinum Entertainment
PMP Records
Point Blank
Point Music
Polybeat
Polydor Classics and Jazz
Polydor Nashville
Polydor Atlas
Polydor
PolyGram Video
PolyGram Holding, Inc.
PolyGram Latino
PolyGram Classics/Jazz
PolyGram Group Distribution
Popular Records
PRA
Premier
Premium
Priority Records
Private Music Video
Private Music
PSI Comm
Publishing
Pumpko Inc., Ltd.
Push Records
Q Division
Qwest Records
R.E.X. Music
Rabbit Ears
Radio Universe
Radioactive
RAL Def Jam
Random House
Rap-A-Lot
Razor & Tie
Razor Sharp
RCA Victor (Greatest Hits & Basic 100)
RCA Records
RCA Victor Jazz
RCA Victor Living Stereo
RCA Victrola
RCA Label Group
RCA Special Products
RCA Records Nashville
Rebound Records
Red Baron Productions, L.T.D.
Red Ink
Red Seal
Red Light
Redbook
Reebok
Refuge
Regency
Rejoice
Relapse
Relativity Records
Relix
Reprise
Resound
Restless Records
Revelation
Revolution
RFC
Rhino Video
Rhino Records
Rhino Home Video
Right Stuff
Rising Tide Nashville
Risky Business
Riva
River North
RKD
RLG Records
RLG/Nashville
RMM
Roadrunner Records
Robbins Entertainment
Roc-A-Blok
Rock N' Roll
Rodven Records
Rooart
Roswell Records
Rotten
Rowdy
RSO
RTR Records, Inc.
Rubenstein Media Label
Ruffhouse Records/Ovum

Ruffhouse Records
Rush Associated Labels
Ruthless Records
Saja Records
Samson
Sarabellum
Savage Records
SBK Records
Scotti Bros./Street Life Records
Scratchie Records
Sea Creatures
Seed
Seismic Records
Select Records
Seon
Sepetys Entertainment Group
Seraphim
Shang
Shimmy-Disc
Shrapnel
Silas
Sire/Elektra
Skunk/Gasoline Alley
Sky
Slamm Dunk
Slash
SMSP/Signature
SMV
So So Def
Soho Square
SOLAR Records/J. Hines Company
Sonic Images
Sony Broadway
Sony Classical
Sony Classical Film and Video
Sony Direct
Sony Discos
Sony 550 Music
Sony Latin
Sony Masterworks
Sony Music Distribution
Sony Music Entertainment, Inc.
Sony Music International
Sony Music Nashville
Sony Music Special Products
Sony Portrait
Sony Wonder
So So Def
Soundwave
Southern Studios
Sparrow Records
Special Markets
Spinart
Sports Video
Spring House
Stardog
Starsong
Stepson
Stonecreek
Street Life Records
Streetbeat
Stretch Records
Suave House
Super K
SURCO
Swan Song
T.R.S.
Tag Records
Telarc Blues
Telarc Jazz
Telarc Jazz Zone
Telarc
Telarchive
Teledec
Theatrical Video
The Children's Group
The Right Stuff
The Columbia House Company
The Wal
The Atlantic Group
Third Stone Records
Thirsty Ear
Threshold
Thump Records
Tim Kerr
Time Bomb
Time Warner Audio Books
TJ Martell
TK Records
Tommy Boy Music
Tooth & Nail
Total Experience
Touch and Go
Track Factory
Trackmasters
Trauma
Tribeca
Together Again Productions/Kidsongs
Triloka
Triplex
TriStar Music Group
Tropical Storm
TRS/Buddah
Trudy Greene
Tuff Gong
TVT/Nothing
Twism
Twisted
Tyscot
ULG
Unison
Unisphere
Universal Records
Universal Latino
Universal Music Group
Universal Music & Video Distribution
University Music Group
University Records
Untertainment
Uptown/URC
Uptown Records
U.S. Latin
V2/GeeStreet/Flydaddy/BigCat
VP Music Group, Inc.
Varese Sarabande Records
Vectron
Vedisco
Velvel Records
Velvel Records/Bottom Line
Vendetta
Vernon Yard

Vertigo
Verve Antilles
Verve Forecast
Verve
Vestron
Viceroy
Victory Music
Victrola
Vinyl Solution
Virgin Compilations
Virgin Underground
Virgin Records, Inc.
Vivarte
Vocalion Records
VP Music Group, Inc.
Walt Disney Records
Wanderlust Interactive
Warlock
Warner Western
Warner Vision Entertainment
Warner Alliance
Warner Bros. Records Inc.
Warner/Curb
Warner/ Elektra/ Atlantic
Warner Kids
Warner Music Group
Warner/Reprise
Warner/Reprise Nashville
Warner Reprise Video
Warner Special Products
Wave Entertainment
Way Cool
WEA Latina
WEA Inc.
What?
Whitfield
Wild Pitch
Win Time
Wind-Up Entertainment
Wind-Up/Grass/Surefire
Windham Hill Group
Wonderland
Word
Word Song
Word Treasures
Work
World Domination Music
Yab Yum Entertainment
Zebra
Zero Hour
Zoom Express
ZYX Music Distributors

Name
---
21 GUNS
311
ABDUL*PAULA
ADAMS*BRYAN
ADDISON*JOHN
ADKINS*TRACE
AFRICAN UNITY
AGENTS OF GOOD ROOTS
AIR SUPPLY
AL B. SURE
ALABAMA
ALDERETE*JOHN
ALDREDGE*ROB
ALFORD*ZACHARY
ALI
ALICE IN CHAINS
ALLAN*GARY
ALLEN*DEBORAH
ALLEN*DONNA
ALLEN*PETER
ALLMAN BROTHERS BAND
ALLMAN*GREGG
ALLOCCO*PHIL
ALPERT*HERB
ALPERT*HERB & TIJUANA BRASS
ALSTON*GERALD
AMOS*TORI
ANDERSON*LEROY
ANGUS*COLIN
APPICE*VINNY
APPLEBY*KIM
ARCADE
ARMAND*RENEE
ARMATRADING*JOAN
ARNOLD*JAMES
AROUND THE WAY
ARRINGTON*KIRK
ARTHURS*PAUL
ASLEEP AT THE WHEEL
ASWAD
AUGUSTYNIAK*JEROME
AUSTIN*BRYAN
AUTRY*GENE
AXELROD*DAVID
AYMAN
AZIMORAD*ORFEH

Name

BABJAK*JAMES
BAD COMPANY
BAD ENGLISH
BADD BOYZ OF THE INDUSTRY
BADGER*PATRICK
BAEZ*JOAN
BAILLIE & THE BOYS
BAKER*ANITA
BAKER*CHET
BAKER*EFUA
BALDWIN*J
BALFE*DAVID
BALL*MARCIA
BALLINGHAM*PAMALA
BANKS*TONY
BARENBERG*RUSS
BARRETT*SYD
BARRIER*ERIC
BASIA
BASTONE*FREDDY
BAYLOR*HELEN
BEACH BOYS
BEASTIE BOYS
BEATLES
BEAUBRUN*THEODORE
BEAUSOLEIL
BECKER*WALTER
BEE GEES
BEECHAM*THOMAS
BEGGARS & THIEVES
BEGHE*FRANCESCA
BELAFONTE*HARRY
BELEW*ADRIAN
BELL BIV DEVOE
BELL*ANDREW IVAN
BELL*MIA
BELLE*REGINA
BELLY
BELOVED
BELUSHI*JOHN
BENATAR*PAT
BENFORD*M. & WOODSHED ALLSTARS
BENITEZ*JOHN
BENSON*GEORGE
BENSON*RAY
BERG*MATRACA
BERGANZA*TERESA

Name
BERKEY*JACKSON
BERRY*W.T.
BETTENCOURT*NUNO
BIENSTOCK*RONALD
BIG BROTHER & THE HOLDING CO.
BIG DADDY KANE
BIG HOUSE
BIOHAZARD
BIRCH*ROB
BLACK 47
BLACK CROWES
BLACK SABBATH
BLACK*CLINT
BLACK*FRANK
BLACKMON*LARRY
BLESSID UNION OF SOULS
BLEY*PAUL
BLOCK*RORY
BLOODSTONE
BLUE*DAVID
BLUES BROTHERS
BLUR
BOB SEGER SYSTEM
BOFILL*ANGELA
BOGGUSS*SUZY
BOLTON*MICHAEL
BON JOVI
BON JOVI*JON
BONOFF*KARLA
BOO-YAA T.R.I.B.E.
BOOK BINDER*ROY
BOSCO MONEY
BOSTON
BOUKMAN EKSPERYANS
BOWDEN*RICHARD
BOWERS*BRYAN
BOWIE*DAVID
BOYD*LIONA
BRAGG*BILLY
BRAND NEW HEAVIES
BRANDT*CHARLES
BRANDT*PAUL
BRANIGAN*LAURA
BREWER*TERESA
BRICKELL*EDIE
BRICKELL*EDIE & NEW BOHEMIANS
BRIGATI JR.*EDWARD J.

Name
BRILL*DMITRY
BRISTOL*JOHNNY
BRITNY FOX
BROKOP*LISA
BROMBERG*DAVID
BRONSKI BEAT
BROOKS & DUNN
BROOKS*GARTH
BROOKS*KIX
BROS
BROWN*BOBBY
BROWN*CHARLES
BROWN*DENNIS
BROWN*LES & BAND OF RENOWN
BROWN*MARTY
BROWN*STANLEY
BROWNE*JACKSON
BROZMAN*BOB
BRYSON*PEABO
BUCK PETS
BUCK*P.L.
BUCK*ROBERT
BUCKINGHAM*LINDSEY
BUCKLEY*GARFIELD
BUDAPEST STRING QUARTET
BUFFALO SPRINGFIELD
BUFFETT*JIMMY
BUNRICK*JOHN RABBIT
BURKETT*CAROLE
BURNETTE*BILLY
BUSH
BUSH*KATE
BUSSERI*FRANK
BUTLER*BERNARD
BYRD*TRACY
BYRNE*CHRISTOPHER
BYRNE*DAVID
C & C MUSIC FACTORY
CACHAO
CACTUS BROTHERS
CAIN*JONATHAN
CAIN*TIM
CALELLO*CHARLES
CALIFORIANS
CALIO*JOIE
CALL OF THE WILD
CALLOWAYS

Name

CAMEO
CAMP*SHAWN
CAMPBELL*JOHN
CAMPBELL*STACY DEAN
CAMPBELL*STERLING
CANADIAN BRASS
CAPTAIN & TENNILLE
CAREY*MARIAH
CARLISLE*BELINDA
CARMODY*SEAN
CARNES*KIM
CARPENTER*KAREN
CARPENTER*MARY CHAPIN
CARPENTER*RICHARD
CARPENTERS
CARR*VIKKI
CARRACK*PAUL
CARTER*CARLENE
CARTWRIGHT*LIONEL
CASH*JOHNNY
CASH*ROSANNE
CASHMAN*TERRY
CETERA*PETER
CHACON*EDDIE
CHAMBERS*JAMES
CHANDLER*GEORGE
CHAPIN*TOM
CHAPMAN*TRACY
CHAPPELL*JIM
CHARLES & EDDIE
CHAVIS*DANNY
CHECKS
CHER
CHERONE*GARY
CHERRELLE
CHERRY*NENEH
CHESNUTT*MARK
CHEYNE*STEVE
CHIC
CHICAGO
CHILD*DESMOND
CHRISTO*JOHNNIE
CHRISTOPHER*SHAWN
CHRISTY*LAUREN
CHUBB ROCK
CHUNG*DONG
CHURCH

Name

CIPOLLINA*MARIO
CLAPTON*ERIC
CLARK*RODERICK
CLARK*VINCE
CLARKE*GRAEME
CLARKE-BALLION*PETER
CLARKE-BALLION*SUSAN
CLAYPOOL*JACKSON
CLIFFORD*DOUG
CLUTCH
COCKER*JOE
COHEN*ANDREW
COHEN*JOHN
COHEN*RUFUS
COHN*MARC
COLE*FREDDY
COLE*HOLLY
COLE*NATALIE
COLLA*JOHN
COLLINS*BOOTSY
COLLINS*PHIL
COLLISION
COLOR ME BADD
COLUCCI*JILL
COLVIN*SHAWN
COMMERFORD*TIM
COMMODORES
COMMUNARDS
CONNELL*DUDLEY
COODER*RY
COOK*STUART
COOK*VICTOR
COOKE*SAM
COOLIO
COOPER*ALICE
COOPER*JEFFREY
COREY*JILL
CORO
COSTELLO*ELVIS
COUNT CONQUEROO
COVER GIRLS
COVERDALE/PAGE
COWBOY JUNKIES
COX FAMILY
COX*SIDNEY
COYOTE SISTERS
CRANBERRIES

Name

CRAVEN*BEVERLEY
CRAWFORD*HANK
CREAM
CREATURES
CREEDENCE CLEARWATER REVIVAL
CRIPPS*MICK
CROSBY STILLS & NASH
CROSBY STILLS NASH & YOUNG
CROSBY*BING
CROSBY*DAVID
CROUCIER*JUAN
CROW*SHERYL
CROWDED HOUSE
CROWELL*RODNEY
CRUSADERS
CRUSH
CRYNER*BOBBIE
CRYSTAL IMAGE
CUNLIFFE*GRANT
CUNNINGHAM*TOM
CURE
CYNTHIA
CYPRESS HILL
CYRUS*BILLY RAY
D-INFLUENCE
D.J. JAZZY JEFF & FRESH PRINCE
DADA
DADDY FREDDY
DALGLISH*MALCOLM
DALGLISH/LARSEN
DALL*BOBBY
DALTON*MARK
DAMONE*VIC
DANIEL*DAVIS
DANIELS*CHARLIE
DANNY CARNAHAN & ROBIN PETRIE
DANZIG*GLENN
DAVIDSON*DAVID
DAVIES*RICHARD
DAVIS*ANDREW
DAVIS*COLIN
DAVIS*MAC
DAVIS*MILES
DAVIS*ZELMA
DAVISON*PARNELL
DAYE*CORY
DAYNE*TAYLOR

Name
DE LA SOUL
DE UREEDE* E.A.
DEAD MILKMEN
DEEE-LITE
DEEP JIMI & THE ZEP CREMES
DEF LEPPARD
DEFRANCESCO*MIKE
DEGLEY*WILLIAM
DEGRATE*DALVIN
DEGRATE*DONALD
DELEO*ROBERT
DELORY*DONNA
DELP*BRADLEY
DEMTWINZZ FEATURING KENNY LATT
DEPECHE MODE
DEREK & THE DOMINOS
DERRINGER*RICK
DES'REE
DIAMOND*JOEL
DIAMOND*NEIL
DICOLA*VINCE
DIFFIE*JOE
DIKEN*DENNIS
DIMIT
DINIZIO*PATRICK
DINNING*DEAN
DIO*RONNIE JAMES
DION*CELINE
DIPIPPO*ANGELO
DIRE STRAITS
DISHWALLA
DONALDSON*LOU
DONOVAN
DOOBIE BROTHERS
DOOM*RAYMOND
DOORS
DOROUGH*BOB
DORSEY*DON
DOUCET*MICHAEL
DOWN BY LAW
DOWNING*WILL
DR. BUZZARD'S ORIG. SAVANNAH B
DR. HOOK
DRAGON*DARYL
DREAM SYNDICATE
DREAM WARRIORS
DREW*DENNIS

Name

DRY BRANCH FIRE SQUAD
DUCAS*GEORGE
DUNN*RONNIE
DURAN DURAN
DURANDISSE*PATRICK
DWYER*MARC
DYLAN*BOB
DYNATONES
E
EAGLES
EARTH TO ANDY
EARTH WIND & FIRE
EASTON*SHEENA
EASTWOOD*CLINT
EAZY-E
ECHOBELLY
EDDY*DUANE
EDWARDS*BERNARD
EDWARDS*MICHAEL
EFUA
ELASTICA
ELECTRIC BOYS
ELECTRIC LIGHT ORCHESTRA
ELECTRONIC
ELIAS*ELIANE
ELLIMAN*YVONNE
ELLIS*HERB
ELLIS*LEONARD
EMERSON LAKE & PALMER
ENTNER*WARREN
ERASURE
ERIC B. & RAKIM
ERIC*JAY
ERICKSON*DUKE
ESCAPE CLUB
ESTEFAN*GLORIA
EURYTHMICS
EVANS*BILL
EVERLAST
EXPOSE
EXTREME
FAGEN*DONALD
FAIRBRASS*FRED
FAIRBRASS*RICHARD
FASCINATION
FASTER PUSSYCAT
FATHER M.C.

Name

FEAR FACTORY
FELDMAN*VICTOR
FERRERA*STEPHEN
FERRY*BRYAN
FETTERS*ROBERT
FIGHTING GRAVITY
FINE YOUNG CANNIBALS
FINK*CATHY
FINK/MARXER
FIRE HORSE
FIREHOSE
FIRM
FISCHER*LISA
FISHBONE
FISHER*MARK
FLACK*ROBERTA
FLEETWOOD MAC
FLICK*VIC
FLICKA
FLOCK
FOGELBERG*DAN
FOGERTY*TOM
FOLDY*PETER
FOO FIGHTERS
FORD*LITA
FORD*PENNY
FORTE*NICK
FOUR BITCHIN' BABES
FOUR LADS
FOUR NON-BLONDES
FOURPLAY
FRAIZER*PHILIP
FRAMPTON*PETER
FRANCIS*CLEVE
FRANTZ*CHRIS
FREDDY JONES BAND
FREE
FREEDOM WILLIAMS
FREELON*NNENNA
FREESE*LOUIS
FREEZE
FREHLEY*ACE
FRENCH*STEPHEN
FREY*GLENN
FRIZZELL & WEST
FUNKDOOBIEST
FURAY*RICHIE

Name

GABRIEL*PETER
GABRIELLE ROTH & THE MIRRORS
GADD*STEPHEN
GADSON*JAMES
GAINES*JEFFREY
GAINES*PETER
GALACTIC COWBOYS
GALLAGHER*NOEL
GALLAGHER*RORY
GALLAGHER*WILLIAM
GANT*KENNETH
GARCIA*JERRY
GARCIA*JERRY BAND
GARCIA/GRISMAN
GARFUNKEL*ART
GATLING*TIMMY
GAYLE*CRYSTAL
GAYNOR*GLORIA
GEARY*PAUL
GENERATION BAND
GENESIS
GENTRY*MELVIN
GIBB*BARRY
GIBB*MAURICE
GIBB*ROBIN
GIBSON*DEBBIE
GIBSON/MILLER BAND
GILL*JOHNNY
GILL*VINCE
GILMOUR*DAVID
GIN BLOSSOMS
GINNY HAWKER AND TRACY SCHWARZ
GLOVER*DAVID
GO WEST
GOLD*ANDREW
GOLDBERG*WHOOPI
GOODMAN*BENNY
GOODRIDGE*ROBIN
GORE*MARTIN
GORMAN*STEVEN
GOUDREAU*BARRY
GOULD*MORTON
GOVI
GRANT*EDDY
GRANT*TOM
GRASS ROOTS
GRATEFUL DEAD

Name

GRAY*DAVID
GRAZLADEI*WILLIAM
GREAT PLAINS
GREEN DAY
GREGG*RICKY
GRIFFIN*WILLIAM
GRILL*ROBERT
GRISMAN*DAVID
GRISSOM*SEAN
GUERINOT*JAMES
GUIOT*JEAN
GULEZIAN*MICHAEL
GUNS N'ROSES
GURLEY*MICHAEL
GUSS*RANDEL
GUSTAFSON*STEVEN
GUY
GUY*BUDDY
GUY/WELLS
GWAR
HACKETT*BOBBY
HAGAR*SAMMY
HAILEY*CEDRIC
HAILEY*JOEL
HALE*PAUL
HALL & OATES
HALL*DARYL
HALL*LANI
HALLAM*NICK
HALLYDAY*DAVID
HAMILTON*SCOTT
HAMMER
HAMMERBOX
HAMMILL*PETER
HAMPTON*CHASEN
HANK FLAMINGO
HARPER*BEN
HARRIS*COREY
HARRIS*EMMYLOU
HARRISON*GEORGE
HASH
HASSELL*JON
HATFIELD*JULIANA
HAWKER*GINNY AND SCHWARZ*TRACY
HAYES*CHRISTOPHER J.
HAYES*WADE
HEADCLEANER

Name

HEADSWIM
HEALEY*JEFF
HEALEY*JEFF BAND
HEART
HEATWAVE
HEAVY D. & THE BOYZ
HEIDT*HORACE
HEIN*WESLEY
HELLIWELL*JOHN ANTHONY
HELMS*JAMES
HENDRIX*JIMI
HENLEY*DEXTER
HENLEY*DON
HENLEY*MINGO
HENSHALL*WILLIAM
HERMAN'S HERMITS
HERMAN*WOODY
HERNANDEZ*ANDY
HERSH*KRISTIN
HI-FIVE
HICKMAN*SARA
HILL*FAITH
HINE*RUPERT
HINOJOSA*TISH
HISHAM
HODGES*WARNER
HODGSON*ROGER
HOFFS*SUSANNA
HOGAN*MIKE
HOGAN*NOEL
HOLE
HOLLAND*KWAME
HOLLIDAY*JOHN
HOLLYFAITH
HONEYDRIPPERS
HOOD*JAMES
HOOTIE & THE BLOWFISH
HOPKINS*LINDA
HOPPER*SEAN
HORN*PAUL
HORNSBY*BRUCE
HORNSBY*BRUCE & RANGE
HOT RIZE
HOT TUNA
HOUSE OF PAIN
HOUSTON*THELMA
HOUSTON*WHITNEY

Name

HOWE*MIKE
HUGH*GRAYSON
HUMES*HELEN
HUNGATE*DAVID
HURDLE*LESLIE
HYMAN*PHYLLIS
HYNDE*CHRISSIE
I MOTHER EARTH
IAN*JANIS
ICE-T
INDIGO GIRLS
INFECTIOUS GROOVES
INGRAM*DAVID
INGRAM*JAMES
INNOCENCE MISSION
IRBY*TRESTON
IRIS*DONNIE
IRIS*DONNIE & CRUISERS
ISAAK*CHRIS
ISLANDERS
ISLEY BROTHERS
ISLEY/JASPER/ISLEY
JACKSON*ALAN
JACKSON*FREDDIE
JACKSON*JANET
JACKSON*JOE
JACKSON*MICHAEL
JACKSON*MILT
JACKSON*WAYNE
JAGGER*MICK
JAMAICA BOYS
JAMAL*AHMAD
JAMBALAYA JIVE
JAMES*BOB
JAMES*HARRY
JAMIROQUAI
JARREAU*AL
JASON
JASON & THE SCORCHERS
JASPER*CHRIS
JAZZ CRUSADERS
JESUS & MARY CHAIN
JESUS JONES
JETT*JOAN
JOBIM*ANTONIO CARLOS
JODECI
JOEL*BILLY

Name

JOHNSON MOUNTAIN BOYS
JOHNSON*MATT
JOLICOEUR*DAVID
JONES*GRACE
JONES*QUINCY
JONES*RICKIE LEE
JONES*ROYSTON
JONES*TOM
JOPLIN*JANIS
JORDAN*MONTELL
JOURNEY
JUDD*WYNONNA
JUDDS
KANSAS
KAUKONEN*JORMA
KAYE*DANNY
KAYE*SYLVIA FINE
KC & SUNSHINE BAND
KEITH*LISA
KELLER*JERRY
KELLEY*RAY
KENNEDY*NIGEL
KENNY G
KETCHUM*HAL
KHAN*ALI AKBAR
KID CREOLE & COCONUTS
KIDJO*ANGELIQUE
KIEDIS*ANTHONY
KIMURA*AUDY
KINCAID*JAN
KING'S X
KING*B.B.
KING*CAROLE
KINGFISH
KINGS OF THE SUN
KINKS
KIRBY*KIER
KIRI TE KANAWA
KIRWAN*LARRY
KITT*EARTHA
KNIGHT*JEFF
KNOPFLER*MARK
KOCH*FRED
KOMATSU*JOANIE
KOOL G RAP & D.J. POLO
KORN
KOTOJA

Name

KRAMPF*CRAIG
KRAVITZ*LENNY
KRISTOFFERSON*KRIS
KROYT*BORIS
KWAME
KWAME AND A NEW BEGINNING
L.A. GUNS
LA FLAVOUR
LABELLE
LAINE*CLEO
LAINE*FRANKIE
LAKE*GREG
LALA*ELISSA
LAMSON*PETER
LANEGAN*MARK
LARSEN*GREY
LARSEN/MARCHAND
LASSER*MAX
LAST APPEAL
LAUDERDALE*JIM
LAUPER*CYNDI
LAUTER*DANIEL
LAW
LAW & ORDER
LAWLER*FERGAL
LAWRENCE*EDDIE
LAWS*HUBERT
LAZET
LAZET BOATMAN
LE GENT
LEARY*DENIS
LEAVITT*PHIL
LED ZEPPELIN
LEDOUX*CHRIS
LEE ROCKER'S BIG BLUE
LEE*PEGGY
LEEDS*ERIC
LEESE*HOWARD
LEGRAND*MICHEL
LENNON*JOHN
LENNON*JULIAN
LENNOX*ANNIE
LEVELLERS
LEVY*BARRINGTON
LEVY*MARCY
LEWIS*HUEY
LEWIS*HUEY & NEWS

Name

LEWIS*RAMSEY
LIGGINS*JOE
LINDBERG*JOHN
LINDSAY*MARK
LINDSTROM*DEANNA
LINEAR
LIPSCOMB*BELINDA
LIQUID AMBER
LITTLE CAESAR
LITTLE JACK LITTLE
LITTLE RICHARD
LITTLE SHAWN
LITTLE STEVEN
LITTLE VILLAGE
LITTLE WALTER
LIVE
LIVGREN*KERRY
LOEB*LISA
LOEB*LISA & NINE STORIES
LOGAN*CRAIG
LOGGINS*KENNY
LONDON SUEDE
LONDONBEAT
LONESOME ROMEOS
LORENZO
LORIMAR*MICHAEL
LOVE*DARLENE
LOVELACE*BOBBY
LOVELESS*PATTY
LOVETT*LYLE
LOWE*CHRISTOPHER
LOWE*MUNDELL
LOWE*NICK
LUBOFF*NORMAN
LUPU*RADU
LYNCH MOB
LYNN*LORETTA
LYNN/TWITTY
LYNNE*JEFF
LYNYRD SKYNYRD
M-PEOPLE
M. DOC
M.C. BRAINS
M.C. BREED
M.C. HAMMER
M.C. SHY D
MADONNA

Name

MAHER*ASHLEY
MALKIN*GARY REMAL
MANCINI*HENRY
MANIC EDEN
MANILOW*BARRY
MANN*JOHNNY
MANN*JOHNNY SINGERS
MANZOLI*ROB
MARDONES*BENNY
MARILYN MANSON
MARK*RAMONA
MARLO*CLAIR
MARR*JOHN MARTIN
MARSALIS*ELLIS
MARSALIS*WYNTON
MARSH*JON
MARSHALL*JOHN
MARTIN*J.D.
MARVIN
MARX*RICHARD
MARXER*MARCY
MASON*JACKIE
MASON*NICK
MASON*VINCENT
MASSIVE ATTACK
MATADIN*S.C.
MATHIS*JOHNNY
MATT BIANCO
MATTEA*KATHY
MATTHEWS*DAVE BAND
MATTHEWS*WINSTON
MAVERICKS
MAVRIDES*ERNEST
MAY*BRIAN
MAYS*JEFF
MAYS*LYLE
MAZZY STAR
MCALMONT & BUTLER
MCBRIDE*MARTINA
MCCARROLL*ANTHONY
MCCAUGHEY*SCOTT
MCCLUSKEY*GEORGE
MCCOURY*DEL
MCCOURY*DEL BAND
MCCRACKLIN*JIMMY
MCCUTCHEON*JOHN
MCDANIELS*DARRYL

Name

MCDONALD*LLOYD
MCDONALD*MICHAEL
MCENTIRE*REBA
MCGRAW*TIM
MCGRIFF*JIMMY
MCGUIGAN*PAUL
MCKEE*MARIA
MCLACHLAN*SARAH
MCVIE*CHRISTINE
MCVIE*JOHN
MEAT BEAT MANIFESTO
MEATLOAF
MEJA
MEL & KIM
MELENDEZ*LISETTE
MENKEN*ALAN
MERCER*JOHNNY
MERCER*KELVIN
MERCHANT*NATALIE
MESAROS*MICHAEL
METAL CHURCH
METALLICA
METAMORA
METHENY*PAT
MIAMI SOUND MACHINE
MICHAEL*GEORGE
MICHAELS*BRET
MICHAELS*LAZET
MIDLER*BETTE
MIDNIGHT STAR
MIKE & THE MECHANICS
MILLER*EDWARD
MILLER*MARCUS
MILLS BROTHERS
MILLS*M.E.
MILLS*STEPHANIE
MILSAP*RONNIE
MINUS 5
MIRTH
MISSION U.K.
MISTY
MITCHELL*CHAD
MITCHELL*CHAD TRIO
MITCHELL*GUY
MITCHELL*JONI
MITCHELL*NEIL
MIZELL*JASON

Name

MOFFATT*HUGH
MOFFATT*KATY
MOFFITT*PETER
MONROIG*GLENN
MONTGOMERY*KEVIN
MOODSWINGS
MOODY BLUES
MORELLO*THOMAS
MORGAN*LORRIE
MORO
MORODER*GIORGIO
MORRISEY*STEVEN
MORRISON*VAN
MORRISSEY
MORVAN*FABRICE
MOTLEY CRUE
MOUZON*ALPHONSE
MUGGERUD*LARRY
MUNVES*MICHAEL
MURAD*JERRY & HIS HARMONICATS
MURDOCK*SHIRLEY
MURPHY*MIC
MURRAY*MICHAEL
MUSICAL NIGHT
MYERS*DWIGHT
MYLES*ALANNAH
N.W.A.
NASH*GRAHAM
NATHAN & ZYDECO CHA-CHAS
NAYOBE
NEAL*RUSSELL
NELSON
NELSON*GUNNAR
NELSON*MATTHEW
NEW LOST CITY RAMBLERS
NEW YORK VOICES
NEWMAN*JIMMY
NEWMAN*RANDY
NEWTON-JOHN*OLIVIA
NICE & SMOOTH
NICHOLS*TODD
NICKS*STEVIE
NIRVANA
NITTY GRITTY DIRT BAND
NIXON*MOJO
NO SPRING CHICKENS
NOEL*CECILIA

Name

NORCIA*SUGAR RAY
NOTTING HILLBILLIES
NOVOSELIC*KRIST
NOW
O'CONNOR*MARK
O'RIORDAN*DOLORES
OASIS
OATES*JOHN
OBSESSED
OFFSPRING
OINGO BOINGO
OLD & IN THE WAY
ONO*YOKO
OR-N-MORE
ORBISON*ROY
ORBITAL
ORCHESTRA NEW ENGLAND
ORCHESTRAL MANOEUVRES IN DARK
ORDER*JEFF
ORION THE HUNTER
OSBOURNE*OZZY
OSLIN*K.T.
OSMOND*DONNY
OWENS*BUCK
PAGAN*NOEL
PAGE*JIMMY
PAGE*PATTI
PANDOLFI*EMILE
PANTERA
PAQUET*CHO
PARIS
PARIS*MICA
PARKER*GRAHAM
PARKER*JOHNNY
PARKER*KEVIN
PARKER*RAY JR.
PARNELL*LEE ROY
PARSONS*DAVID
PARTON*DOLLY
PARTY
PASTORIUS*JACO
PATRICK*FRED
PAUL*LES
PAULEY*WYATT
PEBBLES
PELLOW*MARTI
PENNACHIO*CHARLIE

Name

PENNINGTON*J.P.
PEREZ*DANILO
PERFECT*BARBARA SEEGER
PERRY*STEVE
PET SHOP BOYS
PETER PAUL & MARY
PETRIE*ROBIN
PETTIGREW*CHARLES
PETTY*TOM
PHILLIPS*CHYNNA
PHILLIPS*GLEN
PICKERING*MICHAEL
PINK FLOYD
PINKARD & BOWDEN
PIXIES
PLACE*MARK
PLANT*ROBERT
POCO
POISON
POLICE
PORTISHEAD
POSIES
POWE*ALEXANDER JR.
POWELL*ART
PRAYER CHAIN
PRESENCE
PRESIDENTS OF THE UNITED STATE
PRESLEY*ELVIS
PRETENDERS
PRIEST*MAXI
PRINCIPLE*JAMIE
PRINE*JOHN
PROJECT CITY
PROJECT PARADISE
PROMISED LAND
PRONG
PSYCHODOTS
PULSFORD*NIGEL
QUEEN
QUEENSRYCHE
QUIRK*TIMOTHY
R.E.M.
RAAZDA RUKKUZ
RABBITT*EDDIE
RADIOHEAD
RADLE*CARL
RAGE AGAINST THE MACHINE

Name

RAITT*BONNIE
RAMONES
RANCID
RANDY
RASCALS
RATT
RAWLS*LOU
RAY*AMY
RAYDIO
REA*CHRIS
REBIRTH BRASS BAND
RECOIL
RED HOT CHILI PEPPERS
REDMANN
REDNEX
REED*DALTON
REED*PRESTON
REGONDI
REID*JIM
REID*WILLIAM
REILLY*MARK
REMBRANDTS
REMINGTONS
RESTIVO*JOE
RESTLESS HEART
REVERE*PAUL & RAIDERS
REYES*SENEN
RICH*CHARLIE
RICHARD*ZACHARY
RICHARDS*KEITH
RICHIE*LIONEL
RICHMAN*JONATHAN
RICKETTS*DAVID
RIDERS IN THE SKY
RIFF
RIGHT SAID FRED
RINGENBERG*JASON
RITCHIE*JEAN
RITENOUR*LEE
ROACHFORD
ROBACK*DAVID
ROBBINS*DENNIS
ROBERT VAUGHN & THE SHADOWS
ROBILLARD*DUKE
ROBILLARD*DUKE BAND
ROBINSON*CHRISTOPHER
ROBINSON*RICHARD

Name

ROBINSON*SCOTT
ROCHA*ZACK DE LA
ROCKETT*RIKKI
ROCKMAN*JOE
RODGERS*PAUL
RODRIGUEZ*ELSIE
ROESER*EDWARD
ROGER
ROGERS*EVAN
ROGERS*KENNY
ROLLING STONES
ROLLINS BAND
ROLLINS*HENRY
RONSTADT*LINDA
ROOMFUL OF BLUES
ROSENTHAL*PHIL
ROSS*DIANA
ROSSDALE*GAVIN
ROTH*DAVID LEE
ROTH*GABRIELLE
ROTH*GABRIELLE & MIRRORS
ROXY BLUE
ROXY MUSIC
ROZALLA
RTZ
RUCKER*SPARKY
RUFFNER*MASON
RUN-D.M.C.
RUNDGREN*TODD
RUSH*DONELL
RUSSELL*BRENDA
RUTHERFORD*MIKE
RYTHM SYNDICATE
SACRED REICH
SADE
SALVADOR*SAL
SAMBORA*RICHIE
SAMPLE*JOE
SAMUELS*DAVE
SANBORN*DAVID
SANDEE
SANDERS*MARCUS
SANDOR
SANDOVAL*HOPE
SANTANA
SANTANA*CARLOS
SAVAGE*CHANTAY

Name

SAVAGE*CHRIS
SAWYER BROWN
SCAGGS*BOZ
SCHERMICK*MICHAEL
SCHNAUFER*DAVID
SCHNEIDER*ALEXANDER
SCHOLZ*TOM
SCHOOTS*M.
SCHULER*DANIEL
SCHUUR*DIANE
SCHWARZ*TRACY
SCHWARZ*TRACY CAJUN TRIO
SCIAKY*CARLA
SCOTT*DOMINICK
SCOTT*IRENE
SCREAM
SCREAMING TREES
SEAL
SECADA*JON
SEDAKA*NEIL
SEEGER*MIKE
SEEGER*MIKE & PEGGY
SEEGER*MIKE, PEGGY & PENNY
SEEGER*MIKE,PEGGY,PENNY&BARBAR
SEEGER*PEGGY AND MACCOLL*EWAN
SEEGER*PENNY
SEGER*BOB
SEGER*BOB & SILVER BULLET BAND
SEINFELD*EVAN
SELDOM SCENE
SEPULTURA
SETZER*BRIAN
SEVERIN*STEVEN
SEVERINSEN*DOC
SEXTON*CHARLIE
SHAKESPEAR'S SISTER
SHAMEN
SHAW*ARTIE
SHENANDOAH
SHEPPARD*T.G.
SHF
SHOMARI
SHORE*DINAH
SHORE*HOWARD
SHORTER*WAYNE
SIDDLE*GUY
SIEBENBERG*ROBERT

Name

SIEGEL*DAN
SILKY SLIM
SILVER BLUE JOEL DIAMOND EXPER
SIMMONS*JOEY
SIMMONS*WILLIAM
SIMON & GARFUNKEL
SIMON*CARLY
SIMON*FRED
SIMON*PAUL
SIMS*KYM
SIOUXSIE & THE BANSHEES
SISTER MONIE
SKI*FRANK
SKID ROW
SLAMHOUND HUNTERS
SLAYER
SMASHING PUMPKINS
SMILE
SMITH SISTERS
SMITH*DARDEN
SMITH*DEBI
SMITH*PATTI
SMITH*WILLARD
SMITHEREENS
SMITHS
SMOKING POPES
SNOW
SOCIAL DISTORTION
SOLI DEO GLORIA CANTORUM
SOMERVILLE*JIMMY
SOMETHIN'FOR THE PEOPLE
SONIC YOUTH
SONS OF FREEDOM
SOUL ASSASSINS, INC
SOUL II SOUL
SOUL PIT
SOUNDGARDEN
SOUTHER/HILLMAN/FURAY
SPRINGFIELD*RICK
SPRINGSTEEN*BRUCE
SPUR
SPYRO GYRA
SQUIER*BILLY
STAFFORD*JO
STAGG*HILARY
STANLEY*MICHAEL BAND
STARCLUB

Name

STAROBIN*DAVID
STARR*RANDY
STARR*RINGO
STECHER*JODY
STECHER/BRISLIN
STEEL*TREVOR
STEELE*ROB
STEELHEART
STEELY DAN
STEPHEN*TOM
STEREO MC'S
STEWART*AL
STEWART*DAVE
STEWART*DAVE & SPIRITUAL COWBO
STEWART*SANDY
STILLS*STEPHEN
STILLS*STEPHEN/MANASSAS
STILLS/YOUNG
STING
STIPE*J.M.
STOLTZMAN*RICHARD
STONE PONEYS
STONE TEMPLE PILOTS
STONE*CARL
STONE*LARRY
STONESTREET*JOE
STOOKEY*PAUL
STOTHART*HERBERT
STRAIT*GEORGE
STRATTA*ETTORE
STRAY CATS
STREISAND*BARBRA
STRONG*ANDREW
STYX
SUEDE
SUGAR RAY
SUICIDAL TENDENCIES
SUPERSTAR
SUPERTRAMP
SUTHERLAND*PETE
SWEAT*KEITH
SWEETHEARTS OF THE RODEO
SWEITZER*SALLY
SWING OUT SISTER
TABER*TIM
TAKE 6
TAKE THAT

Name

TALKING HEADS
TAYLOR*DEBBIE
TAYLOR*JAMES
TAYLOR*JULIAN
TAYLOR*ROGER
TEE*RICO
TEN THOUSAND MANIACS
TENNANT*NEIL FRANCIS
TENNILLE*TONI
TESLA
THEY MIGHT BE GIANTS
THIELE*BOB COLLECTIVE
THIN LIZZY
THOMAS*B.J.
THOMAS*IRMA
THOMAS*ROGER
THOMAS*WARREN
THOMASON*RON
THOMPSON*CAROL
THOMPSON*TONY
THOMSON*DOUGLAS
THOROGOOD*GEORGE
THOROGOOD*GEORGE & DESTROYERS
THROWING MUSES
TIBBETTS*STEVE
TILLIS*PAM
TILON*P.I.
TIPPIN*AARON
TO BE CONTINUED
TOAD THE WET SPROCKET
TOM TOM CLUB
TONY!TONI!TONE!
TOO MUCH JOY
TOORISH*BERNIE
TORA TORA
TORME*MEL
TOTO
TRACY SCWARTZ CAJUN TRIO
TRANSGLOBAL UNDERGROUND
TRAVELING WILBURYS
TRAVERS*MARY
TRAVIS*RANDY
TREVINO*RICK
TRICKY
TRITT*TRAVIS
TRZETRZELEWSKA*BASIA
TUCKER*ORRIN ORCHESTRA

Name

TUCKER*TANYA
TURNER*TINA
TWITTY*CONWAY
TWITTY/LYNN
TWO HYPED BROTHERS & A DOG
TWO WITHOUT HATS
UB40
UGGAMS*LESLIE
UGLY KID JOE
ULTRAVOX
UNALLOCATED AARC MEMBER
UNALLOCATED GEIDANKYO MEMBER
UPCHURCH*PHIL
URBAN DANCE SQUAD
URE*MIDGE
URGE OVERKILL
US3
UTOPIA
VAI*STEVE
VALE*JERRY
VALENTINO*VINNY
VALENTINO*VINNY & HEAR NO EVIL
VAN DER GRAAF GENERATOR
VAN SHELTON*RICKY
VAN*BARNEVELD H.J.R.
VANDROSS*LUTHER
VAUGHN*ROBERT
VEGA*LUIS
VEGA*SUZANNE
VELDT
VERA*BILLY & BEATERS
VERDI*SHANE
VERUCA SALT
VIRTUE*FRANK
VIRTUES
VOICE OF THE BEEHIVE
VOLLENWEIDER*ANDREAS
VON STADE*FREDERICA
VOYCE
VYSE*OWEN
WADE*STEPHEN
WAILING SOULS
WAITE*JOHN
WAITS*TOM
WALKER*BILLY JOE
WALKER*CLAY
WALKER*JERRY JEFF

Name

WALKER*JOHN
WALLFLOWERS
WALLINGER*KARL
WALSH*JOE
WARRIOR SOUL
WARWICK*DIONNE
WATERS*ROGER
WATKINS*B.B.
WAVERLY CONSORT
WAX
WAX UK
WEATHER REPORT
WEBER*JOAN
WEIR*BOB
WELCH*BOB
WELCH*KEVIN
WELLS*CRAIG
WELLS*JUNIOR
WERNICK*PETE
WEST*RICHARD
WEST*SHELLY
WESTON*PAUL
WET WET WET
WHAM
WHEELER*CARON
WHITE*ALAN
WHITE*KARYN
WHITE*LARI
WHITE*MAURICE
WHITFIELD*MARK
WHITLOCK*ROBERT
WHITSTEIN BROTHERS
WILD CHERRY
WILDER*JOHNNIE
WILK*BRAD
WILLIAMS*FREEDOM
WILLIAMS*GEOFFREY
WILLIAMS*MASON
WILLIAMS*NATHAN
WILLIAMS*PATRICK
WILLIAMS*PAUL
WILLIAMS*ROBBIE
WILLIAMS*ROGER
WILLIS*KELLY
WILLIS*MARTIN
WILLSON-PIPER*MARTY
WILSON PHILLIPS

Name

WILSON*ANN
WILSON*NANCY
WINFREY*WALTER
WINGER
WINNINGHAM*MARE
WISE*JOE
WITHERS*BILL
WOOL
WORLD PARTY
WRIGHT*MICHELLE
WRIGHT*RICHARD
WYMAN*BILL
WYNN*STEVE
WYNONNA
YA KID K
YANAI*KATE
YARROW*PETER
YAZ
YEARWOOD*TRISHA
YOAKAM*DWIGHT
YOST*KELLY
YOUNG FRESH FELLOWS
YOUNG*NEIL
YOUNG*PAUL
YOUNG*RUSTY
YVONNE
ZAPP
ZAPPA*DWEEZIL
ZAPPA*FRANK
ZAWINUL SYNDICATE
ZAWINUL*JOE
ZEKAVICA*MILAN
ZEVON*WARREN
ZUKERMAN*EUGENIA
A & M RECORDS, INC.
A COMPANY CALLED W
ACOUSTIC DISC
AIRUS RECORDS
ALEXANDER MAESTRO POWE, JR.
ALSHIRE INTERNATIONAL
AMAZING RECORDS
AMERICAN CHORAL CATALOG, LTD.
ANSONIA
ARISTA RECORDS, INC.
ATLANTIC RECORDING CORP.
BAMA RAGS, INC.
BLACK TOP

Name

BLUEWAVE PRODUCTIONS
BMG MUSIC
Ben Pasley
CAPITOL RECORDS, INC.
CELLULOID RECORDS, LTD.
CHANNEL PRODUCTIONS
CHARLY HOLDINGS INC.
COMMODORE ENT. CORP.
CORRY HARRIS
CRIMSON RECORDS
CTW
DAWN BRADLEY
DECO RECORDS
DOLCE & NUIT PRODUCTIONS
DOMINION ENTERTAINMENT
DRG RECORDS INC.
EARTH MOTHER PRODUCTIONS
EAST SIDE, INC.
ECCO RECORDS
EDUCATIONAL GRAPHICS
EDWARD J. BRIGATI, JR.
ELEKTRA ENTERTAINMENT
EMILE L. PANDOLFI
FEVER RECORDS
FIGHTING GRAVITY, INC.
FYZYX MUSIC COMPANY
GANGA DISTRIBUTORS B.V.
GASOLINE ALLEY, J.V.
GEFFEN RECORDS, INC.
GIANT RECORDS
GIJS BERTUS GERARDUS DE LANGE
GNP/CRESCENDO
GOLD CITY RECORDS, INC.
GRATEFUL DEAD MERCHANDISING
GREENHAYS RECORDINGS
GRP RECORDS, INC.
HAPPENSTANCE, LTD
HIGH WINDY AUDIO
HIRIAM RECORDS
HOLLYWOOD RECORDS
HR MUSIC (RHYTHYM SAFARI)
HY WEISS
ICHIBAN RECORDS
IMPROVISING ARTISTS INC.
INDEPENDENT MEMBER CO.
ISAAC REDD HOLT
ISLAND RECORDS, INC.

Name

JAMIE RECORD CO.
JEFF ORDER D/B/A ORDER PROD.
JOEY RECORDS INTERNATIONAL
JORMA KAVKONEN
JOSEPH C. LIGGINS
JOSEPH C. MILLER
JUNE APPAL RECORDINGS
LAFACE RECORDS
LEE JOHNSON
LEFRAK-MOELIS RECORDS
LEONARDA PRODUCTIONS, INC.
MALACO-SAVOY-WALDOXY REC.
MAVERICK RECORDING CO.
MCA RECORDS, INC.
MESSIDOR MUSIK GMBH
MICHAEL H. CROCKETT
MIKE DEFRANCESO
MOBRED, L.L.C.
MORGAN CREEK MUSIC GROUP
MOTOWN RECORD CO., L.P.
MUSIC FOR LITTLE PEOPLE
NEXT PLATEAU RECORDS, INC
NIMBUS RECORDS
NORTHEASTERN RECORDS
OLD SCHOOL RECORDS
OZONE RECORDS, INC.
PETER LAMSON
PETER ROBERTS PRODUCTIONS
PLATINUM ENTERTAINMENT
PLATINUM ENTERTAINMENT, INC.
POLARITY RECORDING CO.
POLYGRAM
PRIORITY RECORDS, INC.
PROFILE RECORDS, INC.
PROPINQUITY RECORDS
PUMPKO INDUSTRIES, INC.
QWEST RECORDS
R & BEATS RECORDS
RADIOACTIVE RECORDS, J.V.
RAVEN RECORDING
RBW RECORD COMPANY
REAL MUSIC
RED BARON PRODUCTIONS
RED ROVER RECORDS
RELATIVITY RECORDS
RELIX RECORDS
RESORT PRODUCTIONS/MUSIC

Name

RHINO ENTERTAINMENT COMPANY
ROADRUNNER RECORDS
ROUNDER RECORDS CORP.
ROWDY RECORDS
RYKODISC
SAJA RECORDS
SDG RECORDS
SEAFAIR-BOLO RECORDS
SEATHRU RECORDS
SFL TAPES & DISCS
SHR&B RECORDS
SILVER BLUE RECORDS
SIRE RECORDS COMPANY
SLAMHOUND PRODUCTIONS
SOLAR RECORDS
SONY MUSIC
SOVEREIGN RECORDS
SUGAR HILL RECORDS, INC.
SWAN SONG, INC.
Scotty W. Elliott
TELARC INTERNATIONAL CORP
TENACIOUS RECORDS
THE IMAGO RECORDING CO.
THIRD STONE RECORDS, INC.
TIM CAIN
TIMBRELINE MUSIC
TVT RECORDS
VAZ RECORDS
VEE JAY LIMITED PARTNERSHIP
VERITAS MUSIC ENTERTAINMENT
WALT DISNEY RECORDS
WALTER M. BOHN
WARLOCK RECORDS, INC.
WARNER BROS. RECORDS
WARNER MUSIC DISCOVERY IN
WAX TRAX RECORDS
WINDHAM HILL RECORDS
YMISTYE L. WHITE
ZOMBA RECORDING CORP.

Total number of members: 1589

PROOF OF SERVICE

State of California)
) SS.
County of Los Angeles)

Short Title: Recording Industry Association of America, inc. and Alliance of Artists and Recording Companies v. Diamond Multimedia Systems, Inc.
Case No.: 98-56727

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 777 South Figueroa Street, 44th Floor, Los Angeles, California 90017. On November 24, 1998, I served the foregoing document described as BRIEF FOR PLAINTIFFS-APPELLANTS RECORDING INDUSTRY OF AMERICA, INC. and ALLIANCE OF ARTISTS AND RECORDING COMPANIES on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Andrew Bridges, Esq.
WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Palo Alto, CA 94304-1050

(BY MAIL) I caused such envelope to be deposited in the mail at Los, Angeles, California with postage thereon fully prepaid. I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit. Executed on November 24, 1998, at Los Angeles, California.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Paulie Davis
PAULIE DAVIS